
Incentivising Foreign Investments and Partnerships in Higher Education in the Philippines: A Development Blueprint



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| | |
|-----------------------------|-------------------------|
| Project Director: | A. Edsel Tupaz, Esq. |
| Project Coordinator: | Joan Martinez |
| Consultants: | Margarita Romero-Atayde |
| | Ira Paulo Pozon |
| | Lingting Shi |

We extend our deepest gratitude to our interview respondents who offered their time and expertise, and contributed valuable information and perspective to this study:

Greg Atienza, Executive Managing Director, Alumni Relations Office, Asian Institute of Management

John Beamish, Regional Director, University of Hertfordshire, UK

David Caine, Director, UWE Global at University of West England

Melva M. Diamante, President, Southville Foreign University

Ramon Garcia, President, Global City Innovative College

Hon. Bernadette Herrera-Dy, Representative, Bagong Henerasyon Party List, House of Representatives, Philippine Congress

Joyce Jakosalem-Cudale, Marketing Director, Southville Foreign University

Shinichiro Kato, Researcher/Adviser, Embassy of Japan, Manila, Philippines

Hendrik Kiamzon, Chief Marketing Officer and Program Head for Marketing, Meridian International (MINT) College

Ricardo Laguda, FSC, President, De La Salle University

Nataliya Lamb, Associate Dean, School of Business and Computing, Southville Foreign University

Patricia Licuanan, Chairperson, Commission on Higher Education

Juan Miguel Luz, Associate Dean, Asian Institute of Management

Lily Freida Macabangun Milla, Director III, International Affairs Service, CHED

Ma. Grace E. Pagkatipuan, Political Affairs Officer III, House of Representative

John Sexton, President, New York University

Dianne Siozon, Counsellor, Study International

Washington Sycip, Founder, SGV Group

Jerome Tadeo, Foreign Student Desk, Bureau of Immigration

Benito L. Teehankee, Chariman, Ramon V. Del Rosario College of Business, De La Salle University

Jose Miguel Vergara, Global Health Network

ABBREVIATIONS AND ACRONYMS

| | |
|--------------|---|
| APEC | Asia-Pacific Economic Cooperation |
| ASEAN | Association of Southeast Asian Nations |
| AUN | ASEAN University Network |
| BIR | Bureau of Internal Revenue |
| BI | Bureau of Immigration |
| BOC | Bureau of Customs |
| BOI | Board of Investments |
| CHED | Commission on Higher Education |
| CMO | CHED Memorandum Order |
| COD | Centers of Development |
| COE | Centers of Excellence |
| DepEd | Department of Education |
| DFA | Department of Foreign Affairs |
| DOF | Department of Finance |
| FAAP | Federation of Accrediting Agencies of the Philippines |
| FHEI | Foreign Higher Education Institution |
| FIA | Foreign Investments Act |
| GATS | General Agreement on Trade in Services |
| HEI | Higher Education Institution |
| ICT | Information and Communications Technology |
| LGU | Local Government Unit |
| MOA | Memorandum of Agreement |
| NIRC | National Internal Revenue Code |
| OECD | Organisation for Economic Cooperation and Development |
| PEZA | Philippine Economic Zone Authority |
| SEC | Securities and Exchange Commission |
| SEZ | Special Economic Zone |
| TESDA | Technical Education and Skills Development Authority |
| TNE | Transnational Education |
| TVET | Technical and Vocational Education and Training |
| UAE | United Arab Emirates |
| UK | United Kingdom |
| VAT | Value Added Tax |
| WTO | World Trade Organization |

DEFINITION OF KEY CONCEPTS

1. **HIGHER EDUCATION:** Higher Education refers to any of various types of education given in postsecondary institutions of learning and usually affords, at the end of a course of study, a named degree, diploma, or certificate indicating equivalent qualifications. Higher education institutions (HEIs) include not only universities and colleges but also various institutions that provide preparation in such fields as law, theology, medicine, business, music, and art. Higher education also includes Technical and Vocational Education and Training (TVET) institutions such as teacher-training schools, junior colleges, and institutes of technology. (Britannica, 2012)

In the Philippines, however, TVET institutions are treated as an entirely different body of institutions, and are thus governed by a different entity – The Technical Education and Skills Development Authority (TESDA). Due to certain limitations, discussions on this study are focused on Higher Education Institutions covered by the Commission on Higher Education (CHED) as described below.

2. **PRIVATE HIGHER EDUCATION INSTITUTIONS:** Private higher education institutions in the Philippines are, as a general matter, established under the Corporation Code and are governed by special laws and general provisions of this Code. Beyond SEC regulation, private higher education institutions are subject to the regulations of the Department of Education and CHED. Those under non-sectarian are duly incorporated, owned and operated by private entities that are not affiliated to any religious organization while those under sectarian are usually non-stock, non-profit, duly incorporated, owned and operated by a religious organization. (CHED, 2012)
3. **PUBLIC HIGHER EDUCATION INSTITUTIONS:** In the Philippines, the State Universities and Colleges (SUCs) are chartered public higher education institutions established by law, administered and financially subsidized by the government. The local universities and colleges (LUCs) are those established by the local government through resolutions or ordinances, and are financially supported by the local government concerned. A CHED Supervised Institution (CSI) is a non-chartered public post-secondary education institution established by law, administered, supervised and financially supported by the government, whether national or local. Other government schools (OGS) are public secondary and post-secondary education institutions, usually technical-vocational education institutions that offer higher education programs. Special HEIs are directly under the government agency stipulated in the law that created them. They provide specialised training in areas such as military science and national defense. (CHED, 2012)

4. **TRANSNATIONAL EDUCATION:** Transnational Education (TNE) includes all types and modes of delivery of higher education study programs, or sets of courses of study, or educational services – including those of distance education – in which the learners are located in a country different from the one where the awarding institution is based. Such programs may belong to the education system of a State different from the State in which it operates, or may operate independently of any national education system. (UNESCO/ Council of Europe, 2002)
5. **FOREIGN INVESTMENT:** Foreign Investment refers to flows of capital from one nation to another in exchange for significant ownership stakes in domestic companies or other domestic assets. Typically, foreign investment denotes that foreigners take a somewhat active role in management as a part of their investment. Foreign investment typically works on a reciprocal level, especially between countries of relatively equal economic stature. (Investopedia, 2012)
6. **FIRM:** This study defines a Firm to be an economic institution and follows an economic definition where such entity engages in profit maximisation (for profit-oriented institutions) or in eleemosynary activities (non-profit) which nonetheless are driven by considerations of efficiency, return on investment, business viability and sustainability regardless of stock or non-stock ownership structures. Since Firms, as used in this study, follow an economic definition, legal and statutory categories normally used to describe businesses such as “corporations,” “partnerships,” “LLPs” and “LLCs” take on a secondary and supportive meaning. (Spulber, 2009)
7. **PARTNERSHIPS:** Partnerships refer to formal collaboration between different institutions to offer education programs in a chosen field. They are typically pursued through any or all of the following: the exchange of students and faculty; the joint operation of teaching and research programs; the provision of intellectual leadership or consultancy in the establishment or restructuring of research and teaching programs, departments, schools or entire universities. Partnerships are established following negotiations between local and foreign universities, or else between foreign universities and the state. They tend to be institutionalised in the form of time-specific Memorandums of Understandings or Agreements. (Olds, 2008)
8. **STAKEHOLDERS:** A Stakeholder is a party that has an interest in an enterprise or project. The primary stakeholders in a typical higher educational venture are its investors, board of directors, administration, faculty, and students. Additional stakeholders include the community, government and labor associations, among others.

9. **INCENTIVES:** Incentive refers to a payment or concession to stimulate greater output or investment, for example: “tax incentives for investing.”
10. **LINKAGES:** Linkages refer to institutional relationships made on the basis of formal or informal agreements which result in cooperative action that result in the accomplishment of shared or specific objectives by the parties involved.
11. **DEVELOPMENT BLUEPRINT:** Development Blueprint is used broadly and pertains to the overall economic development program suggested by this Study, including a set of case studies, empirical findings and incentives, proposed formal and informal institutional frameworks following a consideration of available data, and a proposed solution, captioned as a Model Law, to existing problem areas.
12. **MODEL LAW:** A Model Law is a draft statutory code comprised of a general legal framework for economic incentives for firms belonging to the higher education sector, including HEIs and COEs. The economic incentives are designed to be multi-tiered, consisting of universal incentives available to all firms that meet core criteria, while the second or subsequent tiers provide special incentives to a short list of carefully selected firms.



EXECUTIVE SUMMARY

This report draws from an unpublished study on a development blueprint for higher education in the Philippines commissioned by the British Council in 2013. The said study is revived and updated to address the creation of a favourable environment to incentivise collaboration with foreign higher education institutions (FHEIs) in the Philippines and elsewhere. It also takes on a new significance after the Council's publication of *Opportunities and Challenges in the Internationalisation of the Philippine Higher Education Sector* on the third quarter of 2015. Referred to as Internationalisation of the

Higher Education (IHE) Report, the document raised and explored some fundamental questions about the future direction for both the Philippine government and the higher education (HE) sector. Primary concerns are on encouraging more high quality foreign HEIs to operate in the Philippines and on identifying and addressing legislative and regulatory barriers.

Updated based on the IHE Report, this document also features models of best practices in foreign investments/linkages in the higher education sector in the Philippines and across the

globe, and identifies socio-economic incentives that attract investments in higher education and centres of excellence from foreign institutions. Identifying standards and indicators of success that could form the basis for the Philippine government to grant incentives to higher education institutions (HEIs) and their foreign partners, this report ultimately proposes a 'Model Law' or a 'development blueprint' in the form of a national statute designed to incentivise the domestic and overseas academic sectors to build joint international partnerships.

EXECUTIVE SUMMARY

The first part of the report talks about the global trends in higher education which indicate an increasing demand for the internationalisation of higher education resulting in a sharp increase in cross-border partnerships and linkages. This steady upward trend in the quantity and modes of internationalisation of higher education eventually brings about greater economic and cultural benefits to partnering countries. The same trend applies to the Philippine context, despite several obstacles to internationalisation of HE.

The IHE Report provides a comprehensive discussion of the assessment of the regulatory environment on internationalisation of HEIs in the Philippines vis-à-vis its ASEAN peer group¹. The Philippines generally performed well compared with its ASEAN peers in



terms of transnational education (TNE) strategy and quality assurance and accreditation. It was found to have i) a well-articulated national strategy for IHE, ii) a considerable independence of HEIs on international engagement and setting tuition fee levels, and iii) the most comprehensive TNE strategy and guidelines on FHEIs but tightly regulated TNE activities.

From the various models and modes of promoting IHE through foreign investments and linkages mostly from the Philippines and its ASEAN counterparts, several factors stood out as instrumental to the success of the models.

¹ Based on British Council's (2014) "Shape of things to come in Transnational Education 2" in the IHE Report

EXECUTIVE SUMMARY

These are: an overriding policy on international education; adaptable and responsive governance and regulatory frameworks on international education to international standards and modalities; and immense investment on infrastructure, faculty and capacity building technology to be on par with international standards.

Another part of the report discusses incentives being applied in various economies to encourage the flow of foreign investments and linkages in higher education. These include deregulation, taxes and duties, fiscal and non-fiscal incentives, and recognition. These incentives are not universal and are usually granted to educational institutions reaching certain indicators of success. Of the three categories of measures, accreditation and

recognition is the greatest indicator in identifying HEIs that would match their partnership and investment priorities.

The highlight of the report is a “Model Law” or a legal blueprint which aims to give statutory form to the various incentives and related findings tackled. The Model Law is framed as a national statute that could be adopted by the Philippine Congress, whose provisions are designed to incentivise domestic and overseas academic sectors to build joint international partnerships. A review of applicable statutes, rules and regulations, and Supreme Court cases which deal with HEIs, research centers and “think tanks,” and schools conducting vocational training and education was undertaken to provide the basis for the proposed Model Law.

The Model Law is framed as a national statute that could be adopted by the Philippine Congress, whose provisions are designed to incentivise domestic and overseas academic sectors to build joint international partnerships.

EXECUTIVE SUMMARY

The Model Law is comprised of a general legal framework for economic incentives for higher education institutions, including centres of excellence and vocational and training institutions. Framed as statutory norms, the economic incentives are multi-tiered and universal available to all institutions that meet core criteria acceptable for international linkages. The discussion of the Model law is organised into 6 chapters. Chapter 1 sets forth basic constitutional and statutory objectives, purposes, and policies. Chapter 2 establishes the Transnational Higher Education Development Council. Chapter 3 provides for the governance framework for the operation of academic hubs and zones which receive benefits and incentives under the Model Law regime. Chapter 4 is devoted to labor standards and labor

relations. Chapter 5 seeks to interface the Model Law with existing regulatory agencies. Chapter 6 provides for miscellaneous provisions typically found in Philippine legislation.

The Model Law perceptively follows international best practices of using free economic zones as models for designing laws incentivising the development of the HE sector. It aims to reduce any perception of risk which foreign universities and stakeholders may face in pursuing international academic strategies and transnational expansion. It also follows an output-driven and outcome-based model of performance where state or state-sponsored incentives are linked to a firm's performance. A principal characteristic of the Model Law is the institutionalisation of multi-tiered performance benchmarks.

Encouraging FHEIs to operate in the Philippines definitely presents huge challenges due to the major restrictions in its constitutional, legislative and regulatory frameworks. However, the IHE Report confirms that the creation of a favourable environment for FHEIs will open other opportunities for the Philippines, particularly in the areas of research and teaching. International best practice and opportunity for internationalisation at home will also pave the way for improvement in quality of teaching and ultimately, globally competitive graduates. A national policy with long-term goals will assure higher education development and growth of economic sustainability or meaningful impact on social and cultural development.

EXECUTIVE SUMMARY



With considerable costs and investments transnational education requires, this report hopes to provide both an empirical basis and a legal framework for incentivising TNE activities in the higher education sector. Likewise, it suggests a national strategy for incentivising TNE by leveraging upon the factor of accreditation,

among other legitimating devices.

On the country's potential to become an education hub for the ASEAN region, addressing barriers in the country's legislative and regulatory framework is crucial. With the country's advantages in the English language, the value placed on education, and in its ability to synthesise, it is in

a better position to become a strong regional education hub.

Better opportunities for IHE in the Philippines await with the creation of an enabling environment for both domestic and overseas HEI through a development blueprint for incentivising foreign investments and partnerships in higher education. The urgent call for a strong concerted effort among the education agencies, the government, the public and private HEIs, and FHEIs should be heeded to clear the path for the development of the IHE roadmap and strategy.



INTRODUCTION

BACKGROUND AND RATIONALE.

This unpublished study commissioned in 2013 and originally entitled, “A Development Blueprint for Higher Education in the Philippines²,” takes on a new significance after the publication of Opportunities and Challenges in the Internationalisation of the Philippine Higher Education Sector (will be referred to as IHE Report in the discussion), also by the Council on the third quarter of 2015. The said report focussed on three major areas:

- (i) Implications of the Philippines’

economic and demographic outlook for the higher education (HE) sector

- (ii) Prospects for the internationalisation of higher education (IHE) in the Philippines in terms of national policy, HE institution, and internationalisation of the student body; and

- (i) Reflections and perspectives on the challenges, risks and opportunities for internationalisation.

The report clearly established the growing demand for HE in the country boosted by a very young population and a steady growth in the university age population (20 to 24 year olds) for the next decades; notable improvements in the area of higher education and training; and the forecast of a buoyant economy up to 2020. Moreover, it also said that the use of English as the official language of the ASEAN Economic Community potentially positions the country’s higher education favourably within the region.

² Commissioned by the British Council Philippines in 2013 to the Law Offices of Tupaz and Associates

INTRODUCTION | BACKGROUND AND RATIONALE

Internationalisation at the level of higher education institutions (HEIs) is evaluated based on the institutions' ability to engage internationally through transnational education (TNE) and research collaboration. At the policy level, the report noted that the Philippines has a well-articulated national strategy on IHE policy, with the Commission on Higher Education (CHED) as the dedicated body overseeing the execution of such strategy.³ Further, the existence of a comprehensive TNE strategy, which sets out the terms of engagement between domestic and international HEIs, is a strong point for the country.

A major drawback, however, comes from restrictions on operation and ownership. At present, foreign higher education institutions (FHEIs) can only operate through a local partner institution which must have at least 60 per cent ownership of the venture. This is likely to discourage HEIs with strong global brands that typically want to retain control and direct control over the quality of education delivery.

The IHE Report raised and explored some fundamental questions about the future direction for both the government and the HE sector. And these include –

What can be done to encourage more high quality foreign HEIs to

This unpublished study is being revived and updated by the British Council as this addresses the creation of a favourable environment to incentivise FHEIs.

operate in the Philippines? What are the legislative and regulatory barriers and how can these be addressed?

Anchored on the said questions, this unpublished study is being revived and updated by the British Council as this addresses the creation of a favourable environment to incentivise FHEIs.

³ Based on the conceptual framework developed by the British Council (2010) which uses the Global Gauge indicators to capture the international appeal of a country's HE system and to measure the facility of its environment in international collaboration and engagement

INTRODUCTION | BACKGROUND AND RATIONALE

Newly entitled, “Incentivising Foreign Investments and Partnerships in Higher Education in the Philippines: A Development Blueprint,” this report has the following objectives:

1. Feature models of best practices in foreign investments/linkages in the higher education sector in the Philippines and elsewhere;
2. Identify socio-economic incentives that attract investments in higher education and centers of excellence from foreign institutions and rank these according to importance;
3. Identify standards and indicators of success that may be the basis for granting incentives by the Philippine government to HEIs and their foreign partners; and
4. Propose a ‘Model Law’ or a ‘legal blueprint’ in the form of a national statute designed to incentivise the domestic and overseas academic sectors to build joint international partnerships.



INTRODUCTION | BACKGROUND AND RATIONALE

METHODOLOGY.

The following sources of data were used in the study:

1. KEY INFORMANT INTERVIEWS were conducted to gather perspectives on Philippine HE internationalisation, to validate existing data from secondary sources, and in part, to document best practices featured in the study. The informants were as follows:

- a. Government officials and consultants
- b. Foreign diplomats
- c. Local and foreign businessmen and investors involved in Higher Education and Centres of Excellence
- d. School owners and administrators
- e. Members of the academe

Interviews were conducted face-to-face and online via internet video



conferencing, and through electronic mail. Follow-up interviews were done to confirm information from most of the respondents.

2. RELEVANT SECONDARY SOURCES, particularly from public documents and statistics, news articles, international journals and papers, proceedings from international conferences, internationally recognised guidelines and agreements, and legislation from the Philippines and abroad.

3. STAKEHOLDER ANALYSIS was employed in setting the direction for data collection and analysis in the study. Stakeholders were assessed according to their position on certain issues, especially those that had to do with policy reform. This method facilitates greater objectivity by taking into consideration slants, influences and interests of data sources.

4. THE DESIGN OF THE MODEL LAW was dependent on the outcomes of the data gathering and analysis. This Model Law comprises a fundamental component of the development blueprint: a statutory investment framework, compliant with the Philippine Constitution, which aims to incentivise and develop the higher education sector.

In particular, the Model Law is comprised of a general legal framework for economic incentives for firms belonging to the HE sector, including centres of excellence and vocational and training institutions. The economic incentives are multi-tiered,

consisting of universal incentives available to all firms that meet core criteria acceptable for international linkages, while the second, third, and other tiers provide special incentives to a shortlist of carefully selected firms.

Thus, the following were major considerations in designing the Model Law:

- a. Translation of the implications of socio-economic findings into statutory, legal form;
- b. Use of comparative legal methodology;
- c. Interface of Philippine constitutional, statutory, and administrative requirements with the sample set of best practices;
- d. Application of the case study method; and
- e. Use of the lens of existing Philippine constitutional case law (jurisprudence) to test the provisions of the Model Law as well as peer review for purposes of meeting constitutional permissibility.

LIMITATIONS OF THE STUDY.

The study was primarily limited by time and resource constraints, the latter in the use of terms like “Higher Education” and “Transnational Education,” which may appear to be over inclusive or under inclusive of the concepts defined in the study. Finally, the sample size was not representative of the entire population. However, at the very least, key variances across differing contexts and legal systems were illustrated.



GLOBAL PICTURE: TRENDS IN HIGHER EDUCATION

The advancement of communications and information technology, as well as global market forces, have had a great impact on the development of education. This impact has been two-fold. First, as globalisation ushered in the development of “knowledge economies” or economies more dependent on knowledge and skills than on natural resources, the demand for Higher Education has significantly increased.

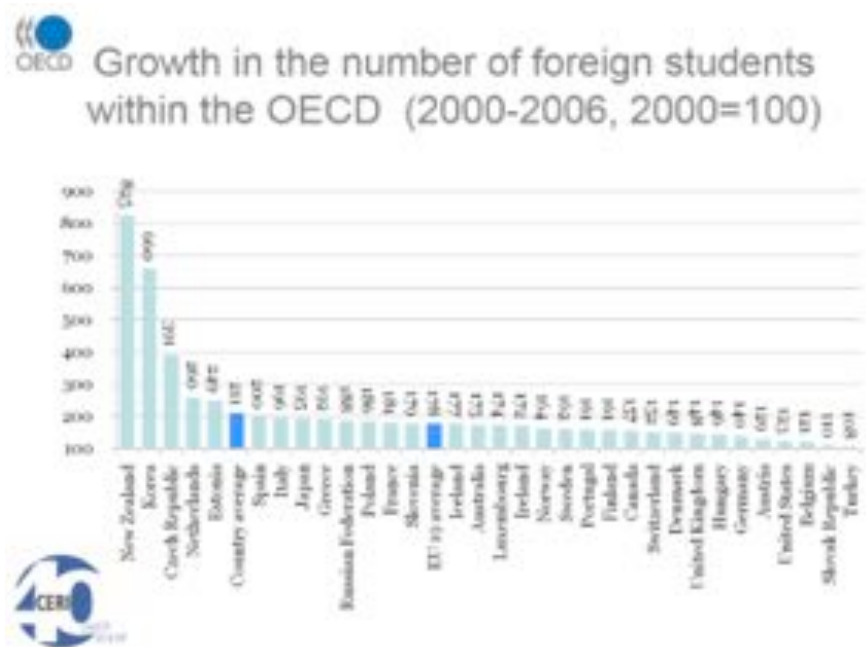
Second, these trends have presented educational institutions with the challenge of being globally-relevant in terms of developing partnerships and competitiveness. Thus, the demand for increasingly internationalised, high-quality educational institutions has brought about a sharp increase in cross-border partnerships and linkages. In fact, student demand for international higher education has been projected to reach 3.72 million by 2025.

[t]he demand for increasingly internationalised, high-quality educational institutions has brought about a sharp increase in cross-border partnerships and linkages.

GLOBAL PICTURE: TRENDS IN HIGHER EDUCATION

In Asia-Pacific, the increasing number of mobile students or students studying in countries other than their home country is evident. Data from both the Organisation for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) indicate the rapid growth of foreign students in their member countries. Figure 1 shows that within OECD countries, the number has increased by 54% between 2000 and 2006, and in APEC countries by 18% a year since 2000. This gradual increase has seen the birth of emerging

FIGURE 1.

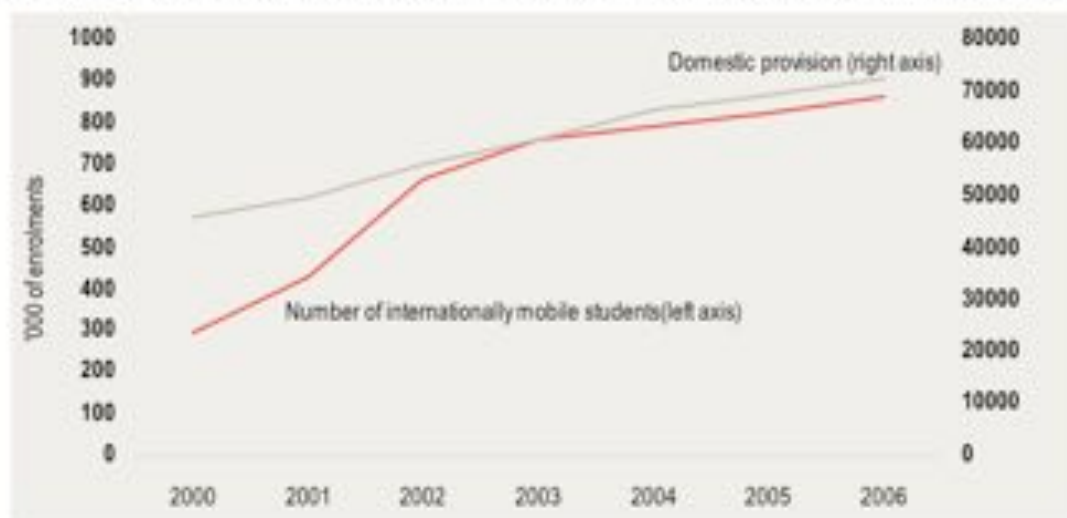


destinations in higher education, particularly in the Asia-Pacific region. Vietnam and Indonesia

have seen the most promising growth in the region – above 20 percent each year (CIE, 2008).

FIGURE 2.

3.2 Number of internationally mobile students versus domestic education, APEC



Data source: UNESCO data applied to APEC economies.

(Source: CIE, 2008)

GLOBAL PICTURE: TRENDS IN HIGHER EDUCATION

Countries like Malaysia, Singapore, and China have made it their goal to become education hubs by aggressively allocating state funds towards developing higher educational systems at par with global standards. This trend in the Asia-Pacific region concurs with those in North America, which Professor Sergio Machado dos Santos⁴ described as follows:

- Increasing emergence of branch campuses, many of which are located in developing countries;
- Increasing number of distance education programs from North America being promoted to developing countries;
- Numerous occurrences of industry groupings forming their own education enterprises, known as “corporate universities” to “lessen their dependence on traditional universities whose outputs they have been dissatisfied with.”

This steady upward trend in the quantity and modes of internationalisation of

higher education has shown significant impact in partnering countries as shown in the following benefits:

- Facilitation of greater *transfer* of ideas and technology among countries;
- Increased *diversity* in education opportunities allowing for greater *match* of knowledge and skills with available employment;
- Increased *quantity* of educational resources and services making the market more competitive;
- Improved *quality* of education as evidenced by meeting *international* standards and attracting students; and
- Development of valuable *networks*, through alumni relations and faculty exchanges that eventually translate into greater *economic* and *cultural* transactions between and among *partnering* countries.

From a global perspective, internationalisation of the higher education sector is a booming industry among

actively participating countries and has become accessible to students, teachers, and institutions in the following modes of delivery across borders:⁵

- *Consumption abroad*, which involves students moving and studying in another country.
- *Cross-border delivery*, where both the educational provider and the learner remain in their respective countries and communicate through various means.
- *Commercial presence*, where the education provider delivers services in the learner’s country usually through a local partner institution or a branch that delivers the foreign program.
- *Movement of natural persons*, which refers to people traveling across national boundaries to deliver services, such as giving lectures to students abroad who are enrolled in transnational education programs.

⁴ Conference of the Directors General for Higher Education and the Heads of the Rectors’ Conference of the European Union, 2000

⁵ General Agreement on Trade in Services (GATS) by the World Trade Organization (WTO)



POTENTIAL FOR INTERNATIONALISATION OF THE PHILIPPINE HIGHER EDUCATION

HIGHER EDUCATION IN THE PHILIPPINE CONTEXT.

The problem of quality in basic education contributes to the lack of preparedness of high school graduates for quality higher education, and consequently the proliferation of sub-standard Higher Education institutions serving to meet the demands of an ill-informed and indiscriminating market. This is attributed mostly to lack of resources allocation by the government, and CHED being ill-equipped to manage a large number of higher education institutions (HEIs). This situation reflects the very

fundamental dilemma in the country's efforts to internationalise Higher Education. As the government seeks to refine its policy framework on the internationalisation of education to meet global standards, it is at the same time bogged down by basic concerns on access to quality education (Teehankee, 2008).

Recent trends, however, suggest a growing demand for higher education boosted by the country's demographic profile and increasing wealth. The IHE report said that the economic performance of the country has

substantially picked up with an investment climate significantly improving, too.

As the government seeks to refine its policy framework on the internationalisation of education to meet global standards, it is at the same time bogged down by basic concerns on access to quality education.

Moreover, the report cited the considerable progress in the Philippines' score in the Global Competitive Index (GCI)⁶ by the World Economic Forum where it has moved to the 52nd spot, up seven places in the global rankings. Likewise, the macro environment was commended as particularly good and was ranked 26th in the world. Significant improvements were also made in the quality of the education system as the country's ranking moved to 29th place in 2014-2015, up from 40th in the previous year. Further, improvements were noted in the area of higher education and training which moved up three places to 64th. The adoption of English as the official language of the ASEAN Economic Community is likely to position the country's HE favourably within the region as English is the language of instruction in Philippine HEIs.

INTERNATIONALISATION OF HIGHER EDUCATION IN THE PHILIPPINES.

The IHE Report provided a comprehensive discussion of the assessment of the regulatory environment on internationalisation of HEIs in the Philippines vis-à-vis its ASEAN peer group.⁷ With regard to both the national policy environment and the internationalisation of HEIs, the Philippines generally performed well in comparison with its ASEAN peers in terms of TNE strategy and quality assurance and accreditation. On the other hand, the established TNE operations is an area it needs to improve on. Following is a description of the different areas assessed:

1. ***Well-articulated national strategy for IHE.*** As the agency primarily responsible for tertiary education in the country, CHED oversees all TNE

activities through two (out of three) technical panels: a) Technical Panel for Open and Distance Education and b) Technical Committee for Transnational Education. Additional support is provided by its International Affairs Staff (IAS). CHED has actively pursued an internationalisation strategy detailed in its Strategic Plan 2011-2016.

2. ***Considerable independence of HEIs on international engagement and setting tuition fee levels.*** CHED Memorandum Order (CMO) No. 02, Series of 2015 lifted the restriction on domestic HEIs wishing to set up overseas. However, enforcing quality control over provision of education overseas remains a challenge owing to limited resources.

⁶ The index measures global competitiveness in 144 countries across 12 broad categories.

⁷ Based on British Council's (2014) "Shape of things to come in Transnational Education 2" in the IHE Report

3. ***Most comprehensive TNE strategy and guidelines on FHEIs but tightly regulated TNE activities.***

CHED's policy on TNE is governed by Memorandum Order No. 2, Series of 2008 or the Policies, Standards and Guidelines (PSG) on Transnational Education, which covers the following:

- Policy environment for quality assurance in TNE;
- Registration process of TNE services;
- Government regulation over TNE;
- Mechanics for recognising FHEIs and their courses of study in the country and for recognising Philippine HEIs engaged in TNE; and
- Terminologies related to TNE.
- TNE has been a priority policy for CHED, albeit a

challenge as shown in the following operations:

- FHEIs are not allowed to set up operation in the country without a local partner, except in the case of distance learning providers. The Philippine partner must also have at least 60 per cent of the ownership of the TNE venture.

Noteworthy to mention are the TNE models governed by two CMOs, and which fall into four categories:

- i. Twinning and international linkages
- ii. Dual qualifications offered jointly by a Philippine HEI and an FHEI
- iii. Franchise models under which the foreign provider offers a programme through a Philippine HEI; and
- iv. Branch campuses which are permitted if the local HEI partner has at least 60 per cent ownership.

Further, two umbrella bodies under CHED oversee quality assurance: Federation of Accredited Agencies of the Philippines (FAPP) and the National Network for Quality Assurance Agencies (NNQAA). The Philippines is also one of the ASEAN countries that has worked with SEAMEO RIHED towards the harmonisation of the region's higher education system and the establishment of the ASEAN Quality Assurance Framework (AQAF).

Similarly, recognition of TNE qualifications is specified in CMO Mo. 2, Series of 2008 or the Policies, Standard and Guidelines on Transnational Education. Given the high number of public and private HEIs, CHED grants a degree of autonomy and deregulation to "deserving private colleges and universities" depending on their quality assurance practices (Teehankee 2008 in IHE Report).

POTENTIAL FOR INTERNATIONALISATION OF THE PHILIPPINE HIGHER EDUCATION

BENEFITS OF INTERNATIONALISATION OF HIGHER EDUCATION

Foreign investment in education is seen in both financial and non-financial terms (e.g. transfer of technology, skill, and/or personnel). Allan Bernardo of De La Salle University specifies the range of activities that are made possible by such investment: “(a) international student mobility, (b) faculty exchange and development, (c) research collaboration, (d) foreign language study, (e) building international perspectives, and (f) international networks.”

Quality and quality control are indeed the central concerns in the development of international education in the country. However, an obstacle related to quality issues is the lack of resources allocated to the education sector according to international standards, if not regional

best practices. And the Philippines is one of the lowest spenders on education in the region (Hoop, 2009).

Given the drawbacks, there are a few institutions that have been able to make significant breakthroughs in TNE. The country has a branch

[a]n obstacle related to quality issues is the lack of resources allocated to the education sector according to international standards, if not regional best practices. And the Philippines is one of the lowest spenders on education in the region.

campus of Southville Foreign University and University of Bradford MBA through collaborations with the United Kingdom and Australia (Ladanga, 2012). These and other overseas “educational providers” are given “a rather favorable tax regime...” (Martin, 2005). Martin further explains:

All income from non-profit educational institutions is exempt from income and property tax as well as customs duties. For-profit institutions may also avail of exemptions from taxes and duties, subject to certain limitations, but profits are subject to tax.

Foreign ownership, however, is still restricted to 40% under Section 4(2), Article XIV of the Philippine Constitution.⁸

⁸ Section 4(2), Article XIV provides:

Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. The control and administration of educational institutions shall be vested in citizens of the Philippines.

No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

POTENTIAL FOR INTERNATIONALISATION OF THE PHILIPPINE HIGHER EDUCATION

The greatest motivation, therefore, for the encouragement of foreign investment in education is its impact on the quality of education. Raising the quality of education to internationally recognised standards is perceived to increase the competitiveness of its educational systems as well as the continued creation and improvement of its current accreditation systems (Pastrana, 2007). Bernardo adds that such investment benefits the country by speeding up the “[improvement of] the

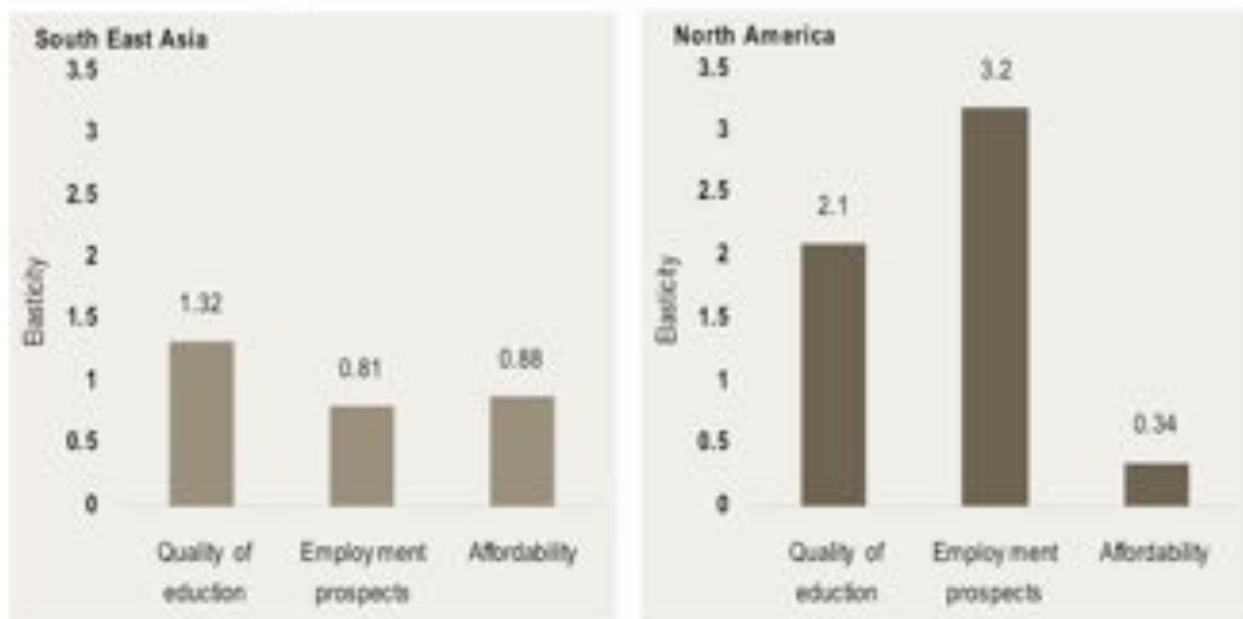
quality of [the Philippines’ existing] programs and resources.” Adriano Arcelo agrees with accreditation in his 2003 paper for the United Nations Educational, Scientific and Cultural Organization International Institute for Educational Planning. He asserts:

Accreditation will continue to play a crucial role in enhancing the quality of higher education in the Philippines. There will be greater pressure to

accelerate the procedure...and accreditation is a good starting point in response to the need for world-class standards in higher education.

Data from APEC countries confirm the premium on quality. The graph below illustrates that quality is not just a demand in the Philippines, but in other parts of the world, particularly APEC member countries.

4.3 Factors driving demand for international education



Data source: CIE calculations based on Bohm et al (2004) and IDP (2003).

(Source: CIE, 2008)

POTENTIAL FOR INTERNATIONALISATION OF THE PHILIPPINE HIGHER EDUCATION

Recently, the Department of Education implemented the K to 12 Basic Education Program designed to calibrate the Philippine basic education system to meet international accreditation standards, particularly the convergence over the required years of schooling in basic education. If implemented properly, the K to 12 Basic Education Program will have significant implications for the capacity of students entering higher educational institutions. It is also seen as a step in the right direction, especially toward developing and institutionalising internationalisation of HE in the country.

The strategy of encouraging FHEIs to operate in the Philippines definitely presents huge challenges due to the major restrictions in its constitutional, legislative and regulatory frameworks (as previously mentioned) which may deter FHEIs from operating in the country. Nevertheless, the IHE Report highlighted that creating a favourable

environment for FHEIs will open other opportunities for the Philippines. For one, FHEIs can be a valuable mechanism to support domestic capacity building and global engagement for Philippine HEIs, particularly in the areas of research and teaching. To date, the Philippine research output lags behind its ASEAN peer group (1,000 research articles per year as against Malaysia's 24,000 and Thailand's 12,000). CHED also identified this poor ranking as one of the key barriers to further internationalisation of HE in the country. FHEIs with strong research base can also support capacity building for Filipino researchers and provide access to international research networks to nurture collaboration, and possibly, to change mindsets. Likewise, international best practice can also be brought by the FHEIs to improve quality of teaching in Philippine HEIs. And finally, for those whom overseas study is not an option, FHEIs provide an opportunity for internationalisation at home, paving the way for

graduates to be globally competitive.

The IHE report further suggests that addressing the barriers to internationalisation of education better positions the Philippines than other countries to become a strong regional education hub. This can be made possible by the excellent command of the English language in Philippine schools and the quality of its HE system, which ranks 29th in the Global Competitiveness Index. Becoming an education hub brings immense benefits which ultimately can spur economic growth in the country. accelerate the procedure...and accreditation is a good starting point in response to the need for world-class standards in higher education.

Data from APEC countries confirm the premium on quality. The graph below illustrates that quality is not just a demand in the Philippines, but in other parts of the world, particularly APEC member countries.



MODELS OF FOREIGN INVESTMENTS AND LINKAGES IN HIGHER EDUCATION

The IHE report provided an assessment of the level of HE internationalisation in the Philippines in terms of (i) national policy environment, and (ii) internationalisation of higher education institutions. This was benchmarked against the ASEAN comparator group (including Vietnam, Indonesia, Malaysia, and Thailand) drawing on the conceptual framework developed by the British Council (2010) and other

significant body of research on internationalisation across both developed and developing countries. The IHE report noted that the Philippines compares favourably with ASEAN peers in the areas of TNE strategy as well as quality assurance and accreditation. Nevertheless, it lags behind in terms of established TNE operations, particularly on ownership and visa

policies, which may deter FHEIs from doing substantial engagement with Philippine HEIs. The following presents the various models and modes of promoting internationalisation of higher education through foreign investments and linkages across the globe (mostly from the Philippines and its ASEAN counterparts).

OTHER COUNTRIES

SINGAPORE: GLOBAL SCHOOLHOUSE

Over the years, Singapore has built a reputation as a hub of educational excellence in the Asia-Pacific region. As a wealthy city-state with few natural resources, Singapore places a large emphasis on the quality of its human capital, and has directed its educational policy towards programs such as the expansion of post-graduate education and research at its universities, as well as the enhancement of its undergraduate curricula. As governance of the rapidly expanding transnational education organisations has become increasingly complex, with a diversity of players that have set up networks in the country, Singapore looks to new governance and regulatory frameworks.

The Global Schoolhouse project was launched in 2002 as a key education policy platform aimed at transforming the country into a knowledge and innovation hub by establishing linkages and partnerships with foreign universities. The project was promoted as a bridge between the East and West, providing Singapore's universities with global best practices in higher education. Among the various Global Schoolhouse initiatives include the alliance between Singapore and the Massachusetts Institute of Technology, and the remodelling of the National University of Singapore as a global university. The government has been strategically inviting reputable foreign universities to set up Asian campuses in the State or establish joint degree programs with local universities. Singapore

boasts of satellite campuses of institutions such as the Institut Européen d'Administration des Affaires (2000), the University of Chicago Booth School of Business (2000), and the New York University's Tisch School of the Arts (2007).

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Singapore attracts FHEIs due to factors such as its strategic geographical position within Southeast Asia (boosted by Changi Airport), with close proximity to South Asia and East Asia; quality of life; large number of transnational corporations; political stability; and presence of relatively high quality local universities, among others. The powers and capacities of the Singapore state, such as its ability to provide large scale targeted financial subsidies, and its doses of bureaucratic persistence and persuasion are also important elements in the success of Singapore's transnational education model. For example, the Singapore Economic Development Board emphasises the country's

cosmopolitan nature and uses substantial material resources and incentives to draw foreign universities with rich research and development backgrounds.

Currently, there has been no public assessment of the results and impact of the Global Schoolhouse project, but there are valuable lessons to be learned from this initiative. Knight (2011) points to the withdrawal of two foreign institutions that were invited to set up branch campuses in Singapore, signaling a gap between what institutions expect and the realities of the transnational

education model (e.g. costs and expected return on investments).

As political and economic dynamism strengthens in the Asia-Pacific region, Singapore may well seek to move away from the predominantly British and American template of academic excellence, and into greater engagement and linkages with the region's best universities.

UNITED ARAB EMIRATES: AIMING FOR WORLD- CLASS EDUCATION

The United Arab Emirates (UAE) has taken concrete steps to become a world-class education hub in the Middle East in its efforts to move from an oil-based economy to a knowledge- and services-oriented economy. Over the past several years, in addition to making quality higher education accessible to its own citizens, the UAE has invited prominent universities to offer degree programs or set up branch campuses in the country.

The UAE is comprised of seven Emirates that are semi-independent of each other. Although higher education is the responsibility of the federal government under the Ministry of Higher Education and Scientific Research, several Emirates have developed “free zones,” which exempt business or organizations operating within each zone from federal regulation. For example, free trade zones in Dubai offer business licenses to foreign-owned enterprises and incentives

such as 100% ownership, tax exemption, and infrastructure facilities. Since the early 2000s, these free zones have been utilized to attract foreign higher educational institutions in the country. Abu Dhabi, Dubai, and Ras Al Khaimah have been actively pursuing their intent to become educational hubs – recruiting international universities, faculty, students, and knowledge industries.

While Abu Dhabi is home to branch campuses of New York University and Paris-Sorbonne University, Dubai has garnered more attention for its FHEIs with excellent brand equity, strong academic programs, and experienced faculty. Dubai recruits these institutions primarily as business partners to educate and train future workers for its knowledge economy, rather than to develop their research and innovation expertise. International branch campuses in Dubai are spread across four different free zones, with the International Academic City, in

particular, is a US \$3.27 billion business venture – a concrete proof of Dubai’s commitment to develop education as a profitable commercial industry.

Presently, thirty-seven (37) international branch campuses representing a variety of national curricula (e.g., American, Australian, British, and others) provide undergraduate and graduate degrees in the UAE.

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After the global economic crisis in 2008, it was unclear whether branch campuses in the UAE could stay afloat, but many continue to operate in the region in spite of the difficulties in attracting large numbers of students.

In the 2012 Global Forum organized by The Observatory, Dr. Ayoub Kazim, Managing Director of TECOM Investments' Education Cluster in Dubai, identified three pillars that constitute best practices for a branch campus set up: due diligence that comprises market research, regional market intelligence, and the right team players; starting slow but ensuring a sufficient incubation period while adopting best programs and a strong student recruitment strategy; observing a sustainable approach through measured growth, strong home campus support; and a clear vision of program development.

MALAYSIA: INTENSIFYING INTERNATIONALISATION OF HIGHER EDUCATION

Since the 1990s, private higher education in Malaysia has made a

significant effort to adopt models of higher education from foreign developed nations. The country's ambition to become a regional education hub was first noted in *Wawasan 2020* (Vision 2020), the grand development blueprint pioneered by the Mahathir administration in 1991. Later on, the globalisation of higher education and the changing socio-economic and socio-political environment in Malaysia fueled the publication of the National Higher Education Strategic Plan 2020 and the National Higher Education Action Plan 2007-2010. "Intensifying internationalisation" was as one of the seven major reform objectives of the Plans, which were both, launched in 2007.

Distance learning arrangements, notably "twinning" programs, have been thriving in the country with hundreds being offered by institutions from Australia, New Zealand, the United Kingdom, and the United States, among others, in the 1980s. Later on, a more accommodating

legal framework enabled the development of international branch campuses in the country. However, the invited foreign universities must establish themselves as Malaysian companies, with majority Malaysian ownership, to operate their campuses. A number of international institutions operate branch campuses in Malaysia, such as the Monash University (established in 1998), Curtin University, (1999), Swinburne University of Technology (2000), and the University of Nottingham (2000). In its drive to become a regional education hub, the government has worked closely with overseas partners to strengthen the various transnational educational models present in the country. Corollary, it has also instituted appropriate regulations to safeguard the country's social, political, and economic interests by requiring FHEIs to provide a curriculum addressing the specific human resource needs of the Malaysian economy, among others.

CHINA: RESPONDING TO A GROWING ECONOMY

China is identified as one of the most promising markets for transnational higher education in Asia. Its entry into the World Trade Organization in 2001 facilitated linkages with foreign educational institutions. In 2003, the Chinese State Council introduced the Regulations of the People's Republic of China on Chinese-Foreign Cooperation in Running Schools, enabling Chinese institutions to engage in transnational education provision with foreign providers. These regulations, in addition to prior legislation governing TNE since the 1990s, contain the following stipulations, among others:

- Foreign institutions must partner with Chinese institutions
- Partnerships must not seek profit as their objective
- Half the members of the governing body of the institution must be Chinese citizens, with the president (or its equivalent) residing in China

- The basic language of instruction should be Chinese
- Tuition fees may not be raised without approval

The government sees transnational education as strengthening Chinese universities through access to the world's most advanced education systems, and this accelerates the process of building human capital and promotes economic development. Joint ventures have been increasingly becoming popular in China, with hundreds of partnerships approved by the government ever since the University of Nottingham (UK) and Oklahoma City University (USA) were invited by national authorities to set up operations in China in the mid-2000s. However, the establishment of branch campuses by foreign universities is not permitted unless undertaken with a local institution, and the regulatory framework encourages local stakeholders to consider these campuses not as branches of foreign

The government sees transnational education as strengthening Chinese universities through access to the world's most advanced education systems, and this accelerates the process of building human capital and promotes economic development.

universities but as independent universities.

Majority of the transnational programs are on professional education, such as engineering, computing, information science, business, and management studies. These are offered in China's most prestigious universities which enjoy better infrastructure and a high level of international academic influence attracting a steady increase in students over the last decade.

NEW YORK UNIVERSITY: GLOBAL NETWORK UNIVERSITY

New York University's (NYU) "Global Network University" is anchored in three portal campuses and complemented in several study away (previously known as study abroad) sites around the world. NYU has two portal campuses in operation – the main campus in New York and the campus in Abu Dhabi, with a third campus under construction in Shanghai. The portal campuses are the points of primary affiliation and activity, which can fully accommodate its constituent faculty and students. The portal campuses are complemented by a number of study away

sites fully integrated into the campuses' academic mission and program. Currently, there are ten international academic centers⁹ with plans of expansion in other countries.

According to President John Sexton, the creation of the portal campuses in Abu Dhabi and Shanghai was founded in finding the right partners – people who were entrepreneurial, who believed in the value of education and had faith, especially in the American liberal arts and science educational tradition, who had seen successes in their own city, who understood their city to be one of the world's great emerging idea capitals and centers of commerce, who shared a vision of global

education and who recognised how potent it would be to have a gateway to the global network in their city. Thus, the factors that contributed to the decision of establishing these portal campuses include their politically strategic locations – Abu Dhabi at the heart of the Middle East, and Shanghai as a gateway to Asia and the Pacific – that were receptive to the ideals and template of an American education model and had proven track records as study abroad sites, as well as the cities' cosmopolitan characters, which offer students, faculty, and research partners a vibrant and thriving educational environment.¹⁰

⁹ Accra, Ghana; Berlin, Germany; Buenos Aires, Argentina; Florence, Italy; London, United Kingdom; Madrid, Spain; Paris, France; Prague, Czech Republic; Shanghai, China; and Tel Aviv, Israel

¹⁰ Interview with John Sexton, President, New York University, April 19, 2012.

PHILIPPINE MODELS

The following models represent some of the pioneers in the country that have committed, invested, and even risked in order to develop foreign partnerships and linkages.

SOUTHVILLE FOREIGN UNIVERSITY: FIRST INTERNATIONAL UNIVERSITY IN THE PHILIPPINES

Southville Foreign University (SFU) is one of the handful of schools in the Philippines offering international degrees. SFU was founded in 1997 by Dr. Genevieve Ledesma-Tan and Roger and Helen Bartholomew, making it the first International University in the Philippines. At that time, it was the peak of the Asian Economic Crisis, which surprisingly served as an advantage for SFU. Students who sought for an international degree, but could no longer afford

to study abroad as a result of the crisis, were given a unique opportunity in SFU. SFU also started at a time when CHED had not even come up yet with the regulations to govern their international programs. The first CHED Memorandum Order (CMO) on Transnational Education was released in 2000 (See Annex 2), more than 2 years after SFU had opened.

SFU awards diplomas from several foreign educational institutions namely: University of Chester in the UK, University of Sunderland in the UK, International College of Hotel Management in Australia, and Edexcel in the UK. For these international degrees, students have the option of taking their final year of their studies abroad. Around 50% of their students opt to study abroad for their final year.

The school has substantial investment to meet the standards for TNE. It has the highest tuition fee in the country – approximately USD 27,000 for a degree, which is comprised of three years of schooling. The investment is dedicated to maintaining world-class facilities, small class sizes, and a pool of foreign faculty (composed of around 25% of the total faculty), among others.

Being the first of its kind, SFU has had to deal with a host of growing pains which continue to plague them given that the TNE industry in the country is not fully developed. According to SFU President Dr. Melva Diamante, one major concern is their incompatibility with CHED regulations on TNE which they find outdated or obsolete and “too much,” which limits the growth and development of their international programs.

CHED, however, assured them that a new CMO which promises to be more relevant and less regulatory will soon be released. Another obstacle they perceived in attracting students and foreign partners is the negative perception of the country (i.e., corruption, political instability, peace and order, and vulnerability to natural calamities), which they believed can be countered through responsible journalism.

It is their hope that eventually, TNE providers like them may be duly recognised and given a level playing field so that they may grow and compete under friendlier terms, especially with TNE providers in other countries. Aside from support from CHED, they believed that stronger partnerships with institutions such as the British Council would go a long way in furthering their progress.¹¹

HIGHER EDUCATION FOR ECONOMIC GROWTH: THE CHED AND BPAP PARTNERSHIP

The Information Technology and Business Process Outsourcing (IT-BPO) industry in the Philippines is one of the fastest growing in the country, and is even one of the largest in the world. According to data from the Business Processing Association of the Philippines (BPAP), the industry garnered 9 billion dollars in 2010, making up 4.7% of the country's Gross Development Product (GDP).

One of the key factors contributing to the success of the BPO industry is the country's edge with the English language. In a 2012 Global English Survey¹², the Philippines came out first (and the only country) in the survey scoring above 7.0, which indicates the capacity to "take an active role in business discussions and perform

relatively complex tasks." Furthermore, the 2012 Quacquarelli Symonds World University Ranking for English Language and Literature pegged 3 Philippine universities at the top 50 – Ateneo de Manila University was at 24th place; the University of the Philippines at 32nd; and De La Salle University at 44th.

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¹¹ Interviews with Dr. Melva M. Diamante, President; Nataliya Lamb, Associate Dean, School of Business and Computing; and Joyce Jakosalem-Cudale, Marketing Director, Southville Foreign University, September 6, 2012.

¹² A business English communication software company which did a survey of 108,000 global employees across 156 countries to assess the competency of business English in different industries

In keeping with its goal of sustaining “dominant market position” in the global IT-BPO industry, BPAP has partnered with CHED in order to “address factors of competitiveness, especially in terms of the quality and adequacy of manpower with levels of skills and competencies as learning outcomes from higher education responsive to industry standards and expectations”. To achieve this, the CHED and BPAP public-private partnership (PPP) has set the following objectives for the next five years:

1. Curriculum reform and enhancement to support the skills and competencies required by the IT-BPO industry;
2. Faculty development which includes immersion in IT-BPO operations to ensure that the faculty fully understand and effectively deliver the education content for knowledge and competency at

standards required by the industry, and continuing education to ensure that the faculty keep abreast of developments in the industry;

3. Appropriate testing and assessment to measure and track skills development, competency, and readiness of students and graduates for global competitiveness;
4. Research on emerging technologies and corresponding skills and competencies for advanced inputs on curriculum design, faculty development, and assessment
5. Career guidance for students in higher education for employment or entrepreneurial endeavors; and
6. Development of productive partnerships among the State Universities and Colleges nationwide and BPAP to attain the above

objectives and contribute to the poverty alleviation program of the Commission on Higher Education and the government;

As an initial step in fulfilling the objectives of the partnership, CHED has come out with a Memorandum for HEIs instituting policies, standards and guidelines for integrating courses on “Service Management for Business Process Outsourcing” in business degrees. In developing the curriculum, BPAP and CHED have identified key skills and capacities that future employees need to develop in order to compete in the global market. Hands-on training and internships also form a major part of the curriculum, encouraging increased partnerships between HEIs and industry players. In its “RoadMap 2016,” BPAP hopes to increase employment in the industry from 500,000 to 4.5 million in 2016.¹³

¹³ Interview with Dr. Patricia Licuanan, Chairperson, Commission on Higher Education, June 26, 2012

SPECIAL ECONOMIC ZONE FOR FOREIGN RETIREES

The University of the Philippines (UP), together with the Global Health Network (GHN), and the Philippine Retirement Authority (PRA) have partnered in a move to establish a Special Economic Zone (SEZ) in a 5-hectare plot at the UP Diliman Campus. The purpose is to create a retirement complex for foreigners who are qualified to join the University's "pool of intellectual capital" in their academic and/or research capacities. With this, the University hopes to increase its "international academic standing." The retirees shall be matched into the different UP colleges, based on their expertise. At the same time, housing retirees is an opportunity for the University's School of Medicine (UP Manila) to improve its technology and services in healthcare provision. The PRA, on the other hand, is involved by virtue of its mandate to position the country as a player in the international healthcare services and retirement industry. Finally,

The purpose is to create a retirement complex for foreigners who are qualified to join the University's "pool of intellectual capital" in their academic and/or research capacities. With this, the University hopes to increase its "international academic standing."

GHN, a private sector partner, shall provide world-class healthcare delivery and management services for the foreign retirees. They will also adapt an electronic healthcare system which shall allow patients to integrate medical protocols, records, treatments, prescriptions and consultations from their home country with their healthcare management in the Philippines. This system would also serve as a strong incentive for foreign retirees to settle in the country, particularly at the UP SEZ.

Other partners in this undertaking are the local government, the Department of Interior and Local Government (DILG), Philippine Health Insurance Corporation (Philhealth), private Japanese Corporations, and the Japanese Government. Each partner has an instrumental role in developing the SEZ into an attractive, viable and effective facility both for retirement and academic purposes. The Local Government of Quezon City, where the SEZ is located, is responsible for undertaking the legal processes in creating the SEZ. The DILG will take the lead in maintaining peace and order within the SEZ and in the surrounding areas to ensure the security of the foreign retirees. Philhealth shall be instrumental in managing the insurance systems and services for the retirees. Finally, negotiations are being concluded with certain Japan-based manufacturing companies for their retiring engineers, inventors, scientists and other professionals to retire at the SEZ.

The key advantages offered by the SEZ for these particular retirees are: 1) more affordable healthcare and housing; 2) an ideal, warmer climate good for their health and disposition; and 3) employment opportunity and other income-generating activities such as consulting in research and development, teaching, and various entrepreneurial prospects. A “weekly market” or “trade fair” where retirees can feature their services, inventions and other products is also planned.

For this pioneering initiative, the Japanese Government was the first to commit their support among those developed countries invited to participate. Their role is to ensure and monitor the quality of the facilities and services for their retirees.¹⁴

MOBILE TVET SCHOOLS

Bagong Henerasyon's or BH (this translates as “New Generation”) Mobile Schools is a good illustration of how

government can initiate partnerships on higher education at the local level. *Bagong Henerasyon* is a Youth Party List Organization with representation in Philippine Congress. The *Party List* System in the country allows marginalised or underrepresented sectors of society to be represented by organised sectoral parties in Congress. One of its main advocacies is to enhance the employability and earning capacity of the youth through access to quality training in skills enhancement and livelihood development.

Bagong Henerasyon's or BH (this translates as “New Generation”) Mobile Schools is a good illustration of how government can initiate partnerships on higher education at the local level.

One of BH's flagship projects is its Mobile Schools. These are large vehicles which serve as venues for numerous kinds of technical and vocational education programs. These Mobile Schools are stationed in different communities for a certain duration in order to provide skills training and education to out-of-school youths, women and other members of communities with limited access to such training and education. BH is allotted a certain number of educational vouchers so that they may offer courses for free to qualified beneficiaries. Among the courses offered are the following: call-center skills training; computer literacy; welding; massage therapy, dressmaking; cellphone repair; and skills training for *baristas*, among others. Courses are all accredited by TESDA, which is the government entity mandated to regulate institutions providing Technical Vocational Education and Training (TVET).

¹⁴ Interview with Dr. Juan Miguel Vergara, President, Global Health Network, April 11, 2012.

In order to guarantee quality and relevance of the courses offered, as well as employment opportunities for qualified graduates of their courses, BH has partnered with local governments, government agencies, local and international companies, international donors, and private schools. One of the more successful partnerships undergone by BH is with a call center recruitment firm called PEOPLE2OUTSOURCE. Through the partnership, they created the “Call Center/BPO Job Creation Program” which shall engage them in the following joint activities:

- Assessment of Call Center applicants
- Provision of free English skills training for qualified applicants
- Endorsement of qualified candidates in international call centers
- Conduct of marketing activities to promote the program

Through this partnership, BH has been able to provide skills training to call center and BPO applicants, who, in turn, have been successfully placed in appropriate employment positions in local and multinational firms by PEOPLE2OUTSOURCE.¹⁵

Currently, ESA has a main campus in Quezon City, Philippines and a satellite site in China. The school is Asia’s first institution focussed entirely on the education and research of entrepreneurship. Founders Vivienne Tan and Joel Santos believe that the international degree “is an answer to the country’s need for higher standards of education, with the objective of providing international quality higher education programs while maintaining their affordability and accessibility.” Educational trips around the country and abroad are also offered to allow students not only to observe

business operations first hand, but also to broaden their horizons and inspire innovative ideas.

MINT COLLEGE

Meridian International College or MINT College was founded by Bal Endriga, former President of the Cultural Center of the Philippines (CCP). At first glance, the impression is that MINT is a franchise of an international college based abroad. However, it actually goes the other way around – MINT is a local-based college that is franchising abroad. A satellite campus in Foothill College based in Silicon Valley, San Francisco was established, and together, Foothill and MINT have instituted co-branded programs in business, arts and technology. An office in Hong Kong, which shall be used as the headquarters for their planned satellite campus in Shenzhen, China was also set-up.

¹⁵ Interview with Hon. Bernadette Herrera-Dy, Representative, Bagong Henerasyon Party List, House of Representatives, Philippine Congress, July 10, 2012.

They are also exploring the possibility of setting up campuses in Sao Paolo, Spain and the UK. MINT also maintains partnership with the Canadian Institute of Business and Technology for their Student Exchange Program.

The school employs the “reverse classroom” concept wherein students learn by doing. Courses are taught by practising industry professionals so that students are given actual industry projects to work on as an integral part of their course work. Teaching Methods in the school are also very technology-based -- all students are given an *Ipad* upon enrollment.

Keen on “liberalising” education, MINT allows online application and gives Application Forms for free. Twenty-eight per

The school employs the “reverse classroom” concept wherein students learn by doing.

cent (28%) of its students are full scholars. Furthermore, the Corporate Social Responsibility Program is very much integrated into the school system. They apply the same curriculum in their partner Technical/ Vocational Schools in the outskirts of Metro Manila which they consider as “mission” schools since some of the courses are offered free of charge.¹⁶

CLARK EDUCATION CITY

Owned and managed by an Australian company called Site Group International¹⁷, Clark Education City (CEC) is a vocational school occupying the former

Centennial Expo Filipino site within Clark, Pampanga. The school utilises an outcome-based educational model that focusses on quality graduate study and employment pathways. It aims to prepare students for global opportunities by providing a unique combination of English language training, work skills, and safety training through the provision of Australian Quality Training Framework (AQTF) programs, Philippine Technical Education and Skills Development Authority (TESDA) programs, and occupationally specific non-accredited programs. The facility also provides skilled and semi-skilled training, assessment and up-skilling for employers looking to source or train a workforce.

¹⁶ Interview with Hendrik Kiamzon, Chief Marketing Officer and Program Head for Marketing, Meridian International (MINT) College, June 13, 2012.

¹⁷ Australian company that has its roots in training workers in hospitality courses, such as hotel and restaurant management, but has since expanded to health care and industrial courses.

By undertaking courses in areas of global skills shortage, CEC students can prepare for careers in areas such as construction, healthcare, hospitality, and industry. Currently, CEC hosts over 400 students, with some coming from countries such as India, Bangladesh and Vietnam. CEC also offers intensive month-long English courses to foreign visitors from countries such as Korea. Clark Education City supports its course graduates with its recently launched Career Center, allowing many students to find employment locally and abroad.

Site Group spent 11 million Australian dollars to clear the grounds, refurbish existing buildings, and build new structures in the Clark location. Prior to this, the company looked at other locales in the Southeast Asian region such as in Vietnam. The director of CEC, Steve Ghost noted that among the factors they considered in choosing Clark as their location were “the proximity to an international airport (the Diosdado Macapagal

International Airport), the infrastructure in place, and the large English-speaking population.”

LESSONS LEARNED FROM THESE INTERNATIONAL MODELS

From the international models of foreign investments and linkages in higher education, several factors stood out as instrumental to their success:

- Efforts, investments, and linkages are all guided by an overriding policy on international education – how they see their place in the global education perspective, what they hope to achieve with the internationalisation of education, and how they hope to achieve it. Singapore, for instance, in its goal to be an “innovation hub”, allied themselves initially with the Massachusetts Institute of Technology. The goal of the United Arab Emirates, on the other hand, was to shift from an oil-based to a knowledge-based economy which is why all its education and

training programs are geared towards the needs of its industry partners in the knowledge economy.

- Their governance and regulatory frameworks on international education are adaptable, or at the least, responsive to international standards and modalities. Regulatory bodies have been adjusted to accommodate the diversity of players and stakeholders in the evolving field of international education, while other more conservative societies have found creative ways to balance national sovereignty and cultural integrity with global criteria and paradigms.
- Beyond the vision and the policies, significant commitment to internationalising education has meant immense investment on infrastructure, faculty and capacity building technology to get up to par with international standards.



CURRENT MAPPING OF INCENTIVES FOR FOREIGN INVESTMENTS AND LINKAGES IN HIGHER EDUCATION

This section discusses incentives being applied in various economies to encourage the flow of foreign investments and linkages in higher education. These incentives are not universal; some may apply specifically to certain contexts depending largely on priorities, objectives and capacities of the relevant stakeholders.

| INCENTIVE | GRANTING ENTITIES ¹⁸ |
|---|---|
| DEREGULATION This refers to the allowances and liberties granted in order to offer a certain level of expedience in transactions and autonomy from regulatory parameters. | <ul style="list-style-type: none">• Commission on Higher Education• TESDA• Department of Foreign Affairs<ul style="list-style-type: none">*Bureau of Immigration• Department of the Interior and Local Government• Local Government Units |

¹⁸ Foreign equivalents may hold different offices/titles

CURRENT MAPPING OF INCENTIVES FOR FOREIGN INVESTMENTS AND LINKAGES IN HIGHER EDUCATION

| INCENTIVE | GRANTING ENTITIES ¹⁸ |
|--|--|
| <p>Deregulation may occur on different levels:</p> <ol style="list-style-type: none"> Autonomy from monitoring and evaluation by educational regulatory bodies Exemptions from certain processes and requirements in operating the educational institution. For instance, an HEI may be given a free hand in revising or creating programs. Relaxation of immigration requirements for visas for educators and students (e.g. special visas) Extension of local permits granted | <ul style="list-style-type: none"> • Commission on Higher Education • TESDA • Department of Foreign Affairs Bureau of Immigration • Department of the Interior and Local • Government • Local Government Units |
| <p>TAXES AND DUTIES</p> <p>Various opportunities offering tax incentives, include:</p> <ol style="list-style-type: none"> Tax or duty free import of education and research equipment Certain educational activities and investments granted to the educational institution and/or its Donors Separate customs area for transactions dedicated to educational purposes Creation of Special Economic Zones (SEZ). SEZs refer to a specific geographical area with a single management/ administration that are granted special economic incentives such as duty-free benefits and the like (World Bank, 2009). | <ul style="list-style-type: none"> • Department of Finance <ul style="list-style-type: none"> • Bureau of Internal Revenue • Bureau of Customs |
| <p>FISCAL AND NON-FISCAL INCENTIVES</p> <p>National and local governments prioritize education by allocating a good part of their budget and resources. This can be reflected in the following:</p> | <ul style="list-style-type: none"> • Department of Finance • Department of Education • TESDA • Commission on Higher Education |

CURRENT MAPPING OF INCENTIVES FOR FOREIGN INVESTMENTS AND LINKAGES IN HIGHER EDUCATION

| INCENTIVE | GRANTING ENTITIES ¹⁸ |
|---|---|
| <p>FISCAL AND NON-FISCAL INCENTIVES</p> <ul style="list-style-type: none"> a. Increased national/local budget allocation on education and related services b. Long-term land leases c. Provision of transport and related accessibility services | <ul style="list-style-type: none"> • Local Government Units • Department of Public Works and Highways • Local and/or International Grant Institutions • Private Sector efforts <ul style="list-style-type: none"> • Business • Community-Based |
| <p>RECOGNITION</p> <p>Credibility and to a certain extent, “brand equity,” is a valuable badge, especially for an educational institution to gain increased access to investments and partnerships. Recognition can come in varying forms:</p> <ul style="list-style-type: none"> a. Awarding of title or status indicating expertise and/or adherence to guidelines and standards, such as “Center of Excellence” b. Awarding of achievements in different aspects of education, such as: <ul style="list-style-type: none"> • Research and Development • Advances in Technology • Faculty Performance • Student Performance • Facilities • Environmental Sustainability • Curriculum Innovation • Social Responsibility | <ul style="list-style-type: none"> • International and Local Accrediting Bodies (e.g., International Baccalaureate, Philippine Accrediting Association of Colleges and Universities, Quality Assurance Agency for Higher Education) • International and Local Federations or Consortiums (e.g., ASEAN University Network) • International and Local Awarding Institutions on Specific Fields of Interest (e.g., Leadership in Energy and Environmental Design or LEED) • National Government Institutions <ul style="list-style-type: none"> • Commission on Higher Education • Department of Education • TESDA • Local Government Units |

The above incentives are usually granted to educational institutions reaching certain indicators of success. These indicators carry different

weights depending on the perspective of the granting party. Each country has a standard set of indicators enforced by their respective governing

bodies (e.g., in the Philippines, standards are set by CHED) based on their own priorities and capacities for regulation.

CURRENT MAPPING OF INCENTIVES FOR FOREIGN INVESTMENTS AND LINKAGES IN HIGHER EDUCATION

The study summarises below a general set of success indicators attracting foreign investments and partnerships. These indicators and their weight in terms of importance and priority are based on practices from select countries and the perceptions from different stakeholders as represented by the interviewees.

ACCREDITATION AND RECOGNITION is the greatest indicator for international entities in identifying HEIs that would match their partnership and investment priorities. It actually serves both as an incentive and indicator of success for HEIs. Most of the other indicators fall under this category since acquiring accreditation entails meeting certain requirements and reaching said standards. Foreign entities will primarily consider HEIs which have acquired accreditation or at least are committed and have the capacity to undergo the process of accreditation. There are different levels by which



an institution may gain accreditation: institution-wide, program-specific or those focused on research institutions.

The awarding government or non-government institutions may choose to give greater weight and importance to specific indicators other than those prescribed by accreditation standards such as:

a. **School Facilities and Infrastructure.** This pertains largely to the capacity of the school's facilities and infrastructure to address the needs of the programs in accordance with the set standards, as well

as ensure the welfare of students and teachers.

b. **Faculty.** There are standards set on credentials of the faculty in terms of their education and involvement in research and in other institutions in their field. Usually greater weight is given to institutions with a high percentage of full-time faculty with doctorates or other equivalent degrees in their field. There should also be a sufficient number of qualified faculty to adhere to a recommended faculty to student ratio.

- | | | |
|--|---|--|
| <p>c. Research and Development. This can be measured in terms of number of journals and papers published in international journals and other publications, and/or used in international fora and conferences. Also considered are the facilities, infrastructure and technologies available to support and develop research activities.</p> | <p>international examinations.</p> <p>Depending on priorities, special weight may be given to schools adhering to other standards and values such as environmental sustainability, gender relations and social responsibility. There are accrediting institutions that specialise on such fields.</p> | <p>scholarships granted, joint research activities, internships and/or mentorship programs, and mutual recognition.</p> |
| <p>Lastly, there are other related outcomes that may not be direct performance indicators, but still serve as measures of success for a performing HEI. These may include, but are not restricted to, the following:</p> | | |
| <p>d. Curriculum Innovation. Certain standards are set on relevance and adaptability of the curriculum to the current and global developments and values. For instance, gender sensitivity could be a value that an accrediting body would require of a program's curriculum.</p> | <p>Other performance indicators that may not be covered by accreditation standards include the following:</p> <ul style="list-style-type: none"> • Number of internationally accredited programs • Diplomas granted to foreign students • Graduation and retention rate. This pertains to the number of first-year students who graduate within a given time period (e.g., maximum residency of 5 years) • Volume of foreign linkages and partnerships. This is commonly seen in the number of student and faculty exchange, | <ul style="list-style-type: none"> • Job generation. This is seen in terms of the number of jobs generated by the HEI and its partnerships/linkages. Value is also given in the creation of high-paying employment. • Entry-level income. This refers to the average salary of new graduates at the entry-level. • Alumni participation and contribution. This may be measured in terms of donations (both monetary and non-monetary), network database (especially with foreign alumni), and alumni initiated partnerships and linkages. |
| <p>e. Performance. This is often seen in terms of diplomas granted in internationally accredited programs and achievement in licensure examinations and other local and</p> | | |



MODEL LEGISLATION

INTRODUCTION

In what follows, design considerations are discussed and a model statutory code is suggested. Captioned as a “Model Law,” this legal blueprint aims to give statutory form to the various incentives and related findings tackled in the previous sections. The

Model Law is framed as a national statute that could be adopted by the Philippine Congress, whose provisions are designed to incentivise domestic and overseas academic sectors to build joint international partnerships. A review of applicable statutes, rules and

regulations, and Supreme Court cases which deal with HEIs, research centers and “think tanks,” and schools conducting vocational training and education was undertaken to provide the basis for the proposed Model Law.

The existing corpus of laws and rules chiefly considered includes the following: (See Annex 1 for a full discussion of the review).

- **Constitutional provisions** under the 1987 Philippine Constitution, particularly the rules on foreign ownership.
- **Incorporation requirements** under the Corporation Code of the Philippines for corporations and partnerships. In the case of a single proprietorship, the regulations of the Department of Trade and Industry.
- **Capitalisation requirements** under the Omnibus Investment Code and the Foreign Investments Act (administered by the Board of Investments). If the investor chooses to register in a special economic zone or

freeport zone, then the investor must comply with a chosen, more particularised regime under the Special Economic Zone Act of 1995 (administered by the Philippine Economic Zone Authority).

- **National taxes** pursuant to the National Internal Revenue Code and various issuances of the Bureau of Internal Revenue.
- **Customs duties** pursuant to the provisions of the Tariff and Customs Code of the Philippines and various issuances of the Bureau of Customs.
- **Immigration** requirements for faculty, staff, and students and other visitors pursuant to the Philippine Immigration Act and its amendments, as well as various issuances of the

Bureau of Immigration.

- **Local Government Unit (LGU)** requirements, fees, assessments, and costs.
- **National administrative and regulatory requirements** under the Department of Education (DepEd), the Commission on Higher Education (CHED), and the Technical Education and Skills Development Authority (TESDA).
- Board of Investment (BOI) requirements and the (2012—) Investment Priorities Plan (IPP).
- **Leading Supreme Court cases** which rule upon and clarify constitutional and statutory rules for higher education institutions and research centres. Supreme Court cases are implicated in the foregoing topics.

The Model Law is comprised of a general legal framework for economic incentives for higher education institutions, including centers of excellence and vocational and training institutions. Framed as statutory norms, the economic incentives are multi-tiered and universal available to all institutions that meet core criteria acceptable for international linkages. These also provide special incentives to a shortlist of carefully selected firms.

The Model Law forms an integral part of the development blueprint which this study suggests. No empirical and social study may be complete without a proposed statutory framework that can operationalize such norms and findings. While this Model Law is

dependent on a prior data analysis and a data set that are not tied to legal requirements, still the provisions of the Model Law are designed in compliance with the Philippine Constitution and constitutional jurisprudence.

Following are some considerations in designing the Model Law:

- Incorporation and translation of the normative implications of findings in previous sections to statutory form;
- Use of comparative legal methodology in crafting the statutory form;
- Interface of the Philippine constitutional, statutory, and administrative requirements with the set of best practices and case studies, including

core economic and investment laws in the Philippines, e.g.,

- i. The 1987 Constitution of the Philippines;
 - ii. The Omnibus Investments Code of 1987;
 - iii. The Foreign Investments Act of 1991;
 - iv. The Special Economic Zone Act of 1995; and
 - v. National regulations under CHED, TESDA, and DepEd.
- Test of the provisions of the Model Law under existing Philippine constitutional case law (jurisprudence) as well as peer review for purposes of passing constitutional muster in case of judicial review.

EXPLANATORY NOTE.

The Model Law is organised into 6 “chapters.” Chapter 1 sets forth basic constitutional and statutory objectives, purposes, and policies. Chapter 2 establishes the Transnational Higher Education Development Council. Chapter 3 provides for the governance framework for the operation of academic hubs and zones which receive benefits and incentives under the Model Law regime. Chapter 4 is devoted to labor standards and labor relations. Chapter 5 seeks to interface the Model Law with existing regulatory agencies. Chapter 6 provides for miscellaneous provisions typically found in Philippine legislation.

The Model Law perceptively follows international best practices of using free economic zones as models for designing laws incentivising the development of the HE sector. Since the early 2000s, free zones have

been utilized to attract foreign HEIs. The Model Law aims to reduce any perception of risk which foreign universities and stakeholders may face in pursuing international academic strategies and transnational expansion. It also follows an output-driven and outcome-based model of performance where state or state-sponsored incentives are linked to a firm’s performance. A principal characteristic of the Model Law is the institutionalisation of multi-tiered performance benchmarks.

Section 2(1) makes a comprehensive list of constitutionally entrenched principles and policies supportive of the Model Law in the attempt to legislate a system of incentives for the transnational higher education sector. Section 2(2) provides an enumeration of “constitutional limitations” specific to higher education. The list is not exhaustive, as other

constitutional rules may apply to the activities of the HE sector, e.g., due process clause, equal protection, unlawful taking. Key constitutional provisions are Para. 3, Sec. 4(2), Art. XIV of the Constitution, which refer to an enabling statute to allow the establishment of schools for foreign temporary residents whose enrollment composition may go beyond the one-third cap of international students otherwise applicable to domestic education institutions. Section 2(2)(c) of the draft Model Law may serve this purpose. Section 2(2)(c) should be read with Para. 2 of Section 26, which requires academic service providers to implement a “balanced and diversified enrollment” “at least one-fourth of which” shall comprise Filipino citizens. Thus, foreign student enrollment may be as high as 75 per cent.

The third full paragraph of Section 2 speaks of the “Transnational Higher Education sector” or “TNHE sector.” An attempt is made to define this sector as one that is comprehensive and catch-all. The operative phrase however would be the element that TNHE “involve[s] education systems of a State different from the State where a TNHE provider operates, or programs which may operate independently of any national education system.” TNHE therefore implicates educational systems of at least 2 States, or an educational system not tied to a legal system of any State. The findings of this study point to the continual increase of the international mobility of students; increasing emergence of branch campuses, many of which are located in developing countries; and distance education programs.

The fourth full paragraph of Section 2 declares the aims of TNHE. Some of these aims are drawn from

the current “Twinning Program” of CHED. Study findings indicate the development of valuable networks, through alumni relations and faculty exchanges that eventually translate into greater economic and cultural transactions between and among partnering countries. The findings show that the steady upward trend in the quantity and modes of international education has shown significant impact in partnering countries.

The fifth full paragraph of Section 2 makes explicit the mandate to clearly distinguish and separate regulatory activity, on one hand, and operation of TNHE business, on the other, in order to avoid conflict of interest; to ensure arms-length transactions; and to avoid other moral hazards which arise from any merger of regulation and business operations. It is also important to clearly define the economic space of different actors in any regulatory framework, especially for frameworks

which incentivise economic activity.

Four principles guide all design questions:

1. clarity in roles and responsibility;
2. autonomy and inclusivity;
3. authority and coordination; and
4. resources and capacity.¹⁹

Perhaps a paramount consideration would be ensuring arms-length transactions among all actors within the framework of the Model Law. The best practice approach to avoiding conflicts of interest is to separate the *regulatory* role as much as practically possible from the roles of the *owner*, *developer*, and *operator*²⁰. A successful delineation of roles and functions in the statute will encourage independent regulatory activities in the enforcement stage and will require the regulator to remain fully independent from any individual zone or private economic interest.

¹⁹ See, e.g., Tom Farole and Josaphat Kweka, Institutional Best Practices for Special Economic Zones: An Application to Tanzania, Policy Note No: 25, August, 2011, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTAFRREGTOPTRADE/0,,contentMDK:22987846~pagePK:34004173~piPK:34003707~theSitePK:502469~isCURL:Y,00.html>

²⁰ See id

| ACTOR | ROLES AND RESPONSIBILITIES |
|---|--|
| <p>NATIONAL GOVERNMENT</p> <p>e.g.,</p> <ul style="list-style-type: none"> - <i>Office of the President; the “Executive”</i> - <i>Congress</i> - <i>Local government unit acting on behalf of the national government under enabling legislation</i> | <p>Ensure alignment with national and constitutional policy.</p> <p>Generally a passive role, following issuance of institutional and regulatory framework.</p> |
| <p>REGULATOR</p> <p>e.g.,</p> <ul style="list-style-type: none"> - <i>administrative agencies, including existing agencies which happen to have primary jurisdiction over the particular legal question (e.g., Bureau of Customs)</i> - <i>local government unit</i> | <p>Principal SEZ authority. Active role. Enforce boundary between ‘operation’ and ‘regulation’ of the subject activity. Enforcer of legal framework and legal criteria. Vet all other actors.</p> <p>Fix site boundaries for SEZ. Irreducible duty to tie spatial constraints to other actors (e.g., setting land use baselines, approving development master plans).</p> <p>Set compliance baselines.</p> <p>Pre-compliance licensing and permits.</p> <p>Compliance and monitoring.</p> <p>Compliance and enforcement.</p> <p>Compliance and reporting.</p> <p>Dispute resolution among other actors. “Independent” arbiter.</p> <p>Dispute resolution between other actors and National Government. Institutionally interested arbiter.</p> |

MODEL LEGISLATION | INTRODUCTION

| ACTOR | ROLES AND RESPONSIBILITIES |
|---|--|
| DEVELOPER <i>Note:</i> <ul style="list-style-type: none"> - <i>Developer need not be the owner</i> - <i>Government may have equity share</i> | <p>Land-use planning (master plan) and pre-construction activities.</p> <p>Infrastructure.</p> <p>Establish physical baselines for utilities</p> |
| OPERATOR <i>Note:</i> <ul style="list-style-type: none"> - <i>Operator may be developer</i> - <i>Subject to constitutional ownership restrictions</i> | <p>Principal actor for TNE norms.</p> <p>Directly subjected to ownership-operation constitutional restrictions.</p> <p>Under public-private partnership norms.</p> |
| OWNER <i>Note:</i> <ul style="list-style-type: none"> - <i>Usually associated with the investor</i> - <i>Private or public entity</i> | <p>Principal actor for TNE norms.</p> <p>Directly subjected to ownership-operation constitutional restrictions.</p> <p>Under public-private partnership norms.</p> |

Similar to the bearings of Section 2, Section 3 sets forth the “purposes, intents, and objectives” of the Model Law. The terms in Section 3 are more particularly phrased and are designed to provide greater clarity in the interpretation of the more abstract pronouncements

found in Section 2. Moreover, Section 3 lays greater emphasis on the economic aspect of the TNHE sector, notably the development of “backward and forward linkages” in or around TNHE zones. Encouraging backward and forward linkages will lead to business

development and business clusters between core zone-related activities and unrelated, peripheral activities. Studies support the claim that backward and forward linkage building may also facilitate knowledge transfer to the local economy.

Section 4 attempts to set forth a non-exhaustive list of definition of key terms. For the term “firm” as used in Section 4(a), an economic definition is encouraged, with less regard to the legal forms which firms take on. In defining “higher education,” Section 4(b) is designed to be inclusive of technical and vocational training and education, including adult education, which would otherwise fall under the jurisdiction of TESDA. Section 4(e) sets forth a definition of “linkages” to encompass both formal and informal exchanges. “Linkages” ought to be interfaced and read with Sections 7(e) (“recognition”) and 8(a) (“international linkages”). Section 4(g) introduces the term “TNHE Space,” which is the sum total of all TNHE entities qualified to avail of incentives under the Model Law. The Model Law allows for the creation of units of TNHE Space beyond Philippine territory. Under the principle of extraterritoriality, units may be set up in

government-owned or controlled property in other states, Philippine consular grounds, embassies, and mission premises. To the extent allowable by Philippine law and the law of the host state, pockets of TNHE Space may be created by agreement between and among the Philippine government and accredited TNHE stakeholders situated abroad. These “pockets” may take the form of “branch,” “satellite,” or “portal” campuses. Another important term is “stakeholder,” which is broadly described as an entity or firm that holds a “substantial and meaningful interest” in a TNHE project or enterprise. The principal regulatory body envisioned by the Model Law – the Transnational Higher Education Development Council or simply “Council” – may find it well to prescribe in greater detail what firms and entities could qualify as “stakeholders” through the Council’s regulatory

issuances. “Stakeholder” can be a moving definition, or a definition situated in time and place.

Section 5 further breaks down TNHE Space to “Zones” and “Hubs,” which are the basic units under the Model Law. Only the President may directly create or upgrade these basic units, following a prior recommendation and endorsement by the Council. In the creation process, the Council only has the power to recommend, while the President has the power to create. Once established by executive fiat, the Council may proceed to regulate the Zone or Hub. As set forth in Chapter II, the Council is envisioned to be a public corporation imbued with an independent legal personality, but a corporate body whose staffing is directly under the supervision of the Good Governance Commission (GCG). Policy considerations behind the Council’s design are discussed below.

Section 6 sets forth the baseline criteria for the establishment of Zones and Hubs. The baseline criteria were generally drawn from the provisions and regulations of the Special Economic Zone Act of 1995, as amended, in order to stay close to the existing economic and legal framework for economic zones. The findings of this study affirm the fact that HEIs behave much like any economic firm in maximizing return on investment. For instance, Clark Education City chose the Clark economic zone due to such factors as location and proximity to an international airport (the Diosdado Macapagal International Airport), the infrastructure in place, and the large English-speaking population.

Section 7 introduces the concept of a graduated, multi-tiered scale of incentives and benefits, which are further classified into five general categories. Section 7 was designed with the empirical findings of this study in mind. One of the more under-appreciated

areas of administrative and institutional design is predicated any performance evaluation across a wide range of outcome-based indicators. Reliance upon regulatory incentives such as reducing bureaucratic “red tape,” though common, is usually a necessary but not a sufficient condition for specialised or sector-specific economic development. Incentivising the regulatory regime, including the budget, by pegging regulatory incentives to stakeholder returns may be key. Each stakeholder may ascend through regulatory ‘tiers’, with each tier generating greater economic space depending on that stakeholders’ compliance with pre-fixed norms. Once stakeholders comply with pilot norms associated with a pilot tier, firms and regulators alike will expect themselves to aim for higher, moving targets.

Noteworthy is Section 7(e) (“recognition”), which can operate both as an incentive and as a benchmark obligation. Recognition may overlap and include other

performance incentives and performance benchmarks. While 3 tiers are required under the Model Law, the Council is empowered to create new tiers under proportionality principles. Any new set of incentives must be proportionate to the burdens required by new performance benchmarks, but for a TNHE Zone or Hub to meet any new tier which the Council may prescribe, such Zone or Hub must be upgraded or established by executive or presidential fiat pursuant to Section 5. Section 7 makes a distinction between the absence of a choice to apply for a higher tier, and the denial of a previous application to ascend to another tier. Even so, a mere prior denial of an application to make the ascension shall not, by that fact or reason alone, constitute a complete disqualification and shall be considered by the Council as “but one negative factor” in future applications.

Following international best practices, Section 8 declares that the Model Law follows an output-driven and outcome-based model of performance. One case study points to Clark Education City (CEC), an Australian-owned vocational school occupying the former Centennial Expo Filipino site within Clark, Pampanga. The school explicitly utilises an outcome-based educational model that focuses on quality graduate study and employment pathways.

Section 8 sets forth substantive criteria for performance benchmarks. Section 8(a) (“international linkages”) uses a broad definition following existing best practices according to the findings of this study, which point to “recognition,” “international recognition,” and “accreditation” – at times used interchangeably – to be the most relevant and paramount incentive and

indicator of successful HEIs. Special consideration is given to Zones or Hubs which establish or hold branch, satellite, and portal campuses abroad as shown in the leading transnational education practices of New York University (NYU). NYU’s “Global Network University” is anchored in three portal campuses. Other international presence can take the form of “study away” (or “study abroad”) sites around the world. Study away sites are designed to be fully integrated into the academic mission of the portal campuses.

Southville may be a good case study for Philippine institutions. For Southville’s international degrees, students have the option of taking their final year of their studies abroad. Around 50% of their students opt to study abroad for their final year.

The case study of Thames is also illustrative. Today, Thames continues to send

students to overseas affiliates, primarily in Australia and the United Kingdom, to complete their undergraduate and/or graduate studies, and graduate with an international business degree from the foreign university with the option of earning a double degree. Thames also offers opportunities to spend a school term or summer abroad. Over the past decade, a number of linkages have been developed with international universities in Australia, China, New Zealand, the UK, and the US. Some of the most popular destinations for students have been the University of Portsmouth, Northumbria University, Curtin University, Hertfordshire University, and Middlesex University. MINT, a local-based college that is franchising abroad, with a satellite campus in Foothill College based in Silicon Valley, California, is yet another illustration.

“Diversity” under Section 8 is given weight in assessing faculty and student composition, again following the thematic requirement of “internationally accepted best practices.” The criterion of student diversity, for instance, is further broken down into substantive (e.g., gender) and non-substantive norms (student ratios). Research and development considers both the publication element and necessary infrastructure. Curriculum innovation uses “global developments, trends, and values” as operative terms, and is a criterion tied to accreditation, recognition, and international linkage building. Reciprocity and mutual recognition of partner institutions are also factors to be considered by the Council. Following an output and performance-based model, Section 8 places a premium on the existence and effectiveness of in-house career services, job placement, and alumni performance and alumni participation.

While the study findings indicate that the Philippines’ postgraduate population is increasing due to the growing demand for higher degree programs, the quality of programs that were offered often fell short of the skills that were actually needed according to job market demands. It was observed that graduates’ skills did not match workforce requirements (jobs-skills mismatch). Curiously, data on the Philippine labor force show that graduates from higher levels of education have higher unemployment/underemployment rates, save for graduates from the top educational institutions. Thus, in incentivising successful in-house career services and job placement programs, the Model Law aims to reduce the dissonance between skill sets and actual job demand.

Another finding illustrates the case of Bagong Henerasyon Party-List, a sectoral representative in Congress. Through partnerships, Bagong Henerasyon Party-List

created the “Call Center/BPO Job Creation Program” which engaged private sector participants in joint activities such as (i) assessment of call center applicants, (ii) provision of free English skills training for qualified applicants, (iii) endorsement of qualified candidates in international call centers, and (iv) conduct of marketing activities to promote the job program.

While the study findings indicate that the Philippines’ postgraduate population is increasing due to the growing demand for higher degree programs, the quality of programs that were offered often fell short of the skills that were actually needed according to job market demands.

For financial sustainability, Section 8(k) provides for the criterion of grant and endowment building, progressive per capita-endowment ratios, and tuition subsidy. The study found that existing private HEIs rely on tuition fees to shoulder 80-90% of their operating expenses. Thus, Section 8(k) highlights the need for HEIs to build adequate endowment funds to counter otherwise prohibitive tuition costs.

Because the Model Law is a sector-specific development framework, Section 8(l) considers upstream and downstream sectoral development, a criterion which the Council can use to assess how well a Zone or Hub can effectively develop backward and forward economic linkages within and beyond the academia. The last paragraph of Section 9 provides for secondary but related “quasi-indicators” such as housing and healthcare.

Section 9 institutionalises a developmental model based on the principle of dispersion, disaggregation, or diffused growth. The idea behind this development model is a design conception where economic zones are not to be spatially constrained to a singular pre-existing “zone” associated with a typical Freeport estate. Rather, zones are to be disaggregated throughout the country. By spreading out pockets of economic development, knowledge capital can radiate outward in different geographical and population centers in the country, according to one’s pace, but simultaneously. The Model Law pursues this particular development model through the creation of disaggregate but concurrent separate customs territories where the flow of human resources, capital, and equipment in the name of higher education are exempt from prohibitive

costs, and all investments, incentivised and pegged to performance benchmarks.

Private firms are incentivised to avoid typical costs imposed by public authorities whose interests may happen to be driven by parochial needs, or driven by institutional constraints. Under the scheme of the Model Law, private firms are free to veer towards those agencies, local governments, and regions which they feel can best actualise their unique educational objectives. For instance, institutes capable of delivering academic services that are not infrastructure-heavy are free to choose potential sites which do not typically have the facilities associated with industrial estates and freeport zones and proceed to set up shop in those sites by seeking the Council’s endorsement.

The diffused development model which predicates the Model Law aims to strike a balance between concentrated, strategic, and focused growth on one hand, and inclusive growth, on the other. For one, this development model has been tried and tested most notably in the business process outsourcing (BPO) sector. Section 9 is also designed to stay close to the principle of decentralization of TNHE operations, autonomy, and deregulation. While no doubt the principal regulatory authority should be centralized (the Council), day-to-day TNHE operations should aim for autonomy and deregulation, with the least degree of administrative interference to the extent feasible and constitutionally permissible.

Section 10 is declarative of the principle that each Zone or Hub is to be treated as a separate customs territory.

The findings of this study show that CHED is ill-equipped to manage such a large number of HEIs. The Council is herein envisioned to be a strong and centralised regulatory agency immediately proximate to the President, or the Office of the President. Best practices point to the establishment of a regulator that is centralized instead of a bureau under an existing line ministry or department.

Section 12 sets forth the investment threshold for natural persons to avail of permanent resident status for a (renewable) 2-year period. Permanent resident status includes the immediate members of

the investor's family. Section 12 grants the Council direct powers to issue such visas and immigration status, with no further dealings with the Bureau of Immigration save for a reportorial requirement by the Council.

Chapter II uses the term "governance" of academic space. Section 13 establishes the principal regulatory body known as the "Transnational Higher Education Development Council," or simply "Council." The findings of this study show that CHED is ill-equipped to manage such a large number of HEIs. The Council is herein envisioned to be a strong and centralised regulatory agency immediately proximate to the President, or the Office of the President. Best practices point to the establishment of a regulator that is centralized instead of a bureau under an existing line ministry or department.

The Model Law takes this further by designing the Council as a government-owned and -controlled corporation (GOCC) with a high degree of fiscal and decisional autonomy. Under Philippine law, GOCCs come under the Executive's supervisory powers, and in many instances, direct Executive control. This is aligned with best practices, which indicate that regulators of zones are most effective when their governing boards report directly to the highest level of government such as the President or Prime Minister, instead of a line agency or ministry such as a department secretary or commissioner.

The proximity of the relationship to the highest level is important because it places the Council in a strong position to coordinate across government bodies and local governments. That the Council is a GOCC also ensures that it has sufficient independence and autonomy in regulating the affairs of

the transnational higher education sector, an important sector comprising a merger of the economy and the academia. GOCCs in the Philippine milieu, though covered by what can be seen as stringent rules of civil service applicable to any bureau or line ministry, are noticeably more flexible in designing their own budget, staffing patterns, and policy choices.

To ensure broad sectoral and cross-governmental representation, the Council is composed of 7 regular voting members and 6 *ex officio* non-voting members. Best practices point to economic regulators which are governed by a board whose most important characteristic is a membership inclusive of significant representation from the private sector. Yet, a second important characteristic for governing boards is cross-ministerial involvement. The Model Law aims to achieve this through *ex officio* membership

composed of the heads of key departments (e.g., CHED, PEZA). Thus, cross-governmental coordination and instruction can be immediately established whenever the Council members meet and conduct business.

Admittedly the Council's membership is large at 13, including non-voting members. There is no "best practice" regarding how large or small governing bodies ought to be, but studies indicate that most governing boards of economic zones tend to have "small" memberships with less than 13 persons. That said, even as the Model Law seeks to create a relatively large body, the core *voting* membership is only 7 in number. The inclusion of *ex officio* members, though holding no voting power, is a design consideration to facilitate the flow of information and lateral government coordination, as well as to expand governmental transactional space.

A general proscription is set forth in that no member of the Council shall be engaged in activities or shall hold material interests in the establishments found within the TNHE Space. However, Members of the Council may engage in academic research, writing, and teaching provided that such work is not taking place inside the TNHE Space. For instance, members of the Council may teach elsewhere and in other schools, if those schools do not fall within the class of “activities” inside the TNHE Space.

In setting forth the powers and functions of the Council, Section 14 is designed to separate the regulatory function from management or operation. The Council cannot directly create Zones or Hubs but only holds recommendatory powers. Rather, it is the President which creates such Zones and Hubs upon prior

recommendation and endorsement by the Council according to the parameters set forth under Sections 6, 7, and 8, among other provisions of the Model Law. The chief executive officer of the Council is the “President *and* General Manager” or “PGM.”

Section 16 restates the principle that the development of the TNHE sector is to be chiefly led by the private sector. One implication of this policy is that non-core functions ought to be outsourced or privatised to the greatest practicable extent.

Section 17 allows for the creation of “advisory bodies” which are designed to coordinate, communicate, and engage in discursive activity with the TNHE sector at large.

In Chapter III, the Model Law refocuses on the aspect of operations of accredited TNHE

institutions. Provisions follow a multi-sectoral and a multi-governmental decisional model where existing economic regulators and transnational higher education administrators are jointly tasked to formulate development strategies. The legal form of public-private partnerships (PPP) is encouraged. PPPs include public provision of off-site infrastructure and facilities in the form of utilities and roads, while private funding is channeled towards on-site infrastructure; Build Transfer and Operate (BOT) and Build Operate Own (BOO) approaches to on-site and off-site infrastructure; contracting private management for government assets; and equity shifting arrangements whereby a private contract manager can exercise a purchase option once pre-defined performance levels have been reached.²¹

²¹ See, e.g., MENA-OECD Investment Programme, Towards Best Practice Guidelines for the Development of Economic Zones, 23 November 2009, at 11, available at www.oecd.org/mena/investment

Section 23 incorporates by reference the fiscal incentives under existing investment laws, namely, the PEZA Law and the Omnibus Investment Code. Reference is made to existing export laws such as the Export Development Act of 1994. To attain these incentives, the Model Law requires that the legal form for TNHE firms be “non-stock, non-profit educational institutions” because of constitutional requirements.

If TNHE firms do not meet the definition of “non-stock, non-profit educational institutions” as provided in Section 23, Section 24 nonetheless allows for limited tax benefits applicable to “proprietary educational institutions” under existing tax laws. Noteworthy is that Section 24 empowers the Council to grant additional tax incentives for proprietary educational institutions which succeed

in ascending from Tier 1 to Tier 2 and higher tiers. Section 24 effectively delegates the power to impose tax (and the power to lift tax burdens) to the Council, which the Council can exercise if its issuances follow the parameters of existing customs and tax laws, the use of “sunset clauses,” and the “proportionality principle,” which is a principle requiring a reasonably tailored nexus between the level of development of the tax subject and the burdens of the tax imposed.

Sections 25 and 26 contemplate a situation where a firm or stakeholder does not meet the definitions of “non-stock, non-profit educational institutions” and “proprietary educational institutions.” These firms will be subject to burdens normally applicable to private businesses. However, if firms qualify for benefits

under other laws outside the coverage of the Model Law, they may proceed to enjoy those benefits. Physical placement or situs within any Zone or Hub does not by itself grant the firm or stakeholder the benefits and privileges provided by the Model Law.

Section 27 states an anti-discrimination policy in enrollment. It also encourages the establishment of truly “international” schools whose student bodies are noticeably diverse, provided that at least one fourth of the student body is composed of Filipino citizens. Section 27 also mandates the “need-blind” admission policy, which requires admission decisions to be based without regard to an applicant’s financial background or financial need. Only upon post-admission can questions of financial need arise.

The findings of the study highlight the need to make the balancing act between “national interests” and concerns over potential foreign control over the totality of sensitive socio-economic sectors such as the academia, and the academic institution’s need for sustainable operations and attainment of return of investment, however measured. In Malaysia, invited foreign universities must establish themselves as Malaysian companies, with majority Malaysian ownership, to operate their campuses. In China, no fewer than half the members of the governing body of the institution must be Chinese citizens and the president or the equivalent must be a Chinese citizen residing in China. In some jurisdictions, it is expressly required that such partnerships must not seek “profit” as their objective. Joint ventures have now been

increasingly popular in China—with hundreds of partnerships currently approved by the government—ever since the University of Nottingham (UK) and Oklahoma City University (USA) were invited to set up operations in the mid-2000s. However, the establishment of branch campuses by foreign universities is not permitted unless undertaken with a local institution, and the regulatory framework encourages local stakeholders to consider these campuses not as branches of foreign universities but as independent universities. The Philippines is not without counterpart restrictions. Sections 28 and 29 of the Model Law are, therefore, key.

Section 28 of the Model Law is to be declarative of Section 4(2), Article XIV of the Constitution, which, as

The findings of the study highlight the need to make the balancing act between “national interests” and concerns over potential foreign control over the totality of sensitive socio-economic sectors such as the academia, and the academic institution’s need for sustainable operations and attainment of return of investment, however measured.

an exception to the rule, allows for full alien ownership of educational institutions and enrollment of a student body composed of transient foreign persons.

This Constitutional provision reads:

“(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. [Note: The preceding sentence is the “general rule.”] The Congress may, however, require increased Filipino equity participation in all educational institutions.

“The control and administration of educational institutions shall be

vested in citizens of the Philippines.”

“No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrolment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.” [Note: The emphasised sentence is the “exception” to the “general rule” above.] (emphasis supplied).

While the Model Law is clear in allowing for “international schools” which grant full ownership by non-Filipino nationals as well as for enrollment of students who are not Filipino citizens, Section 28 does require educational establishments, as a balancing effort, to meet an admissions threshold of Filipino citizens who must comprise at least “one fourth” of the student body. Thus, while educational institutions under the Model Law are encouraged to set up “international schools” hosting a large number of foreign students, still in all cases such institutions must meet the one-fourth requirement of Filipino enrollment. Currently, the Clark Education City hosts over 400 students, with some students coming from countries such as India, Bangladesh and Vietnam.

Section 29 is a provision designed to clarify the operative terms “control and administration” found in Section 4(2), Article XIV of the Constitution. While “[t]he control and administration of educational institutions shall be vested in citizens of the Philippines,” this control test is met once “line positions” on the level of “President,” “Dean,” “Principal,” “Chancellor,” and other functionally equivalent positions, and an absolute majority of the membership of the governing body or board, are held by citizens of the Philippines. This particular control test follows the opinion of Fr. Joaquin G. Bernas, S.J.²²

Following international best practices, the Model Law empowers the Council to set forth a “negative list” of prohibited activities (as opposed to a “positive” or enabling list of

allowable activities) under Section 30. Any negative list must be based on considerations of “national interests, national security, territorial integrity, peace, order, and stability, and international criminal activity.” An important facet in formulating the negative list is the use of default clauses which authorise the automatic approval of applications if no ruling is issued within a specified review period. This default auto-approval mechanism is a best practice for facilitating the conduct of facially legitimate business. The Council in its discretion may specify the types of applications and review periods which may come under the scope of the default auto-approval clause.

Section 39 sets forth the universal requirement of registration and accreditation for *stakeholders*, as opposed

to the very *Zones* and *Hubs* which procured accreditation directly through presidential fiat. Accreditation of stakeholders found within the Zone or Hub may be made by the *Council*, while the establishment of the very Zone and Hub must be made by the *President*. It ought to be clear that the establishment of a “Zone” or “Hub” does not by itself accredit stakeholders and firms affiliated with the original applicant. For firms and stakeholders whose principal places of business lie outside the Academic Space, this Section provides: “Firms desiring accreditation but lie outside existing TNHE Zones and Hubs must file a *concurrent* application for the establishment of a TNHE Zone or Hub, based on the criteria set forth in this Act.” (emphasis supplied)

²² See Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 1103 (1996), for the Development of Economic Zones, 23 November 2009, at 11, available at www.oecd.org/mena/investment

In setting up “one stop shops,” Section 40 directs the Council to strike various Memoranda of Understanding (MOU) with government bodies and similar state contracts. Because the Model Law follows a model of regulatory dispersion and devolution, LGUs and government bodies which happen to stay close to TNHE stakeholders are encouraged to share in exercising regulatory functions, usually reposed in the Council in the first instance, in monitoring and enforcement of laws and standards. “One stop shops” implicate a wide array of regulatory activity, including customs, land use, zoning, taxation, business permits and registration, incorporation, immigration, labor standards and labor compliance, and environmental compliance. Study findings illustrate the practices of the Local

Government of Quezon City, where special economic zones are located and for which the Quezon City LGU shares responsibly for undertaking the legal and administrative processes in creating such special economic zones. To make “one stop shop” arrangements effective, practices stress the need for striking MOUs across agencies which clearly delineate the scope of authority, staffing and scope of staff work, compensation or remuneration, and administrative cost sharing. It has been observed that government institutions may be unwilling to give up authority already under their regulatory domain. The Model Law aims to diffuse inter-institutional friction by providing the Council with recommendatory powers for the President to

consider, at least in the creation and establishment of Zones and Hubs. A perceptively proximate relationship with the Chief Executive has been shown to be an effective institutional approach.

Chapter IV deals with labor standards and labor relations. Of note is the requirement under Section 43 that the Council issue a basic “master contract” for employment relations, contractors, consultants, and other legal forms.

Chapter V sets forth intergovernmental relations. Section 46 makes clear that all TNHE-related government functions exercised by existing agencies are to be transferred to the Council upon the enactment of the Model Law.

Chapter VI contains “miscellaneous provisions” usually found in all legislation. Noteworthy is the explicit enumeration of potential sources of funding and resource management under Section 48, for purposes of sustainability of operations of the Council. Section 49 allows the President to advance funding from savings

under his office subject to the Council’s reimbursement. Because the Model Law is shaped in no small part by existing Philippine investment laws, and because it is precisely designed to be interfaced with existing laws, any ambiguity or doubt which may arise in the interpretation or implementation of the Model Law may be

resolved by resorting to such investment laws, notably, R.A. 7916, otherwise known as the Special Economic Zone Act of 1995, and Executive Order No. 226 (1987), otherwise known as the 1987 Omnibus Investments Code (Executive Order No. 226)

A man with dark hair, wearing a blue and white checkered button-down shirt and a lanyard, is pointing his right hand towards a large presentation screen. The screen displays some text and a map. The background is slightly blurred, showing what appears to be a conference or meeting setting.

MODEL LAW

SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
____ Regular Session)

[HOUSE OF REPRESENTATIVES or SENATE]

[S.B. / H.B.] No. _____

Introduced by [name of Representative of the House or Senator]

An Act Providing for the Legal Framework for the Creation, Operation, Administration, and Coordination of Disaggregated Special Economic Zones for Transnational Higher Education in the Philippines, Creating for this Purpose, the Transnational Higher Education Development Council, and for Other Purposes.

Be it enacted in the Senate and House of Representatives of the Philippines in the Congress assembled:

CHAPTER I

PURPOSES AND OBJECTIVES: ESTABLISHMENT AND NATURE OF TRANSNATIONAL HIGHER EDUCATION ECONOMIC SPACE; CREATION OF THE TRANSNATIONAL HIGHER EDUCATION DEVELOPMENT COUNCIL; COORDINATION WITH GOVERNMENT BODIES

SEC. 1. *Short Title.* – This Act shall be known as “The Transnational Higher Education Economic Incentives Act of ____.”

SEC. 2. *Declaration of Policy.* – **(1)** It is the declared policy of the government to translate into practical realities the following State principles and policies in the 1987 Constitution, namely:

- (a) The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all. (Section 1, Art. XIV)
- (b) The State shall establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society. (Sec. 2(1), Art. XIV)
- (c) The State recognises the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions. (Sec. 4(1), Art. XIV)
- (d) The State recognises the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments." (Sec. 20, Art. II, Constitution)
- (e) The State shall take into account regional and sectoral needs and conditions and shall encourage local planning in the development of educational policies and programs. (Sec. 5(1), Art. XIV)
- (f) Academic freedom shall be enjoyed in all institutions of higher learning. (Sec. 5(2), Art. XIV)
- (g) The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfilment. (Sec. 5(5), Art. XIV)

- ((h) The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods and adopt measures that help make them competitive. (Sec. 12, Art XII, Constitution)
- (i) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. (Para. 1, Sec. 4(3), Art. XIV)
- (j) Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment. (Para. 2, Sec. 4(3), Art. XIV).
- (k) Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax. (Sec. 4(4), Art. XIV)
- (l) All lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation. (Sec. 28(3), Art. VI)

(2) The foregoing are subject to the following constitutional limitations:

- (a) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. (Para. 1, Sec. 4(2), Art. XIV).
- (b) The control and administration of educational institutions shall be vested in citizens of the Philippines. (Para. 2, Sec. 4(2), Art. XIV).
- (c) No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrolment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents. (Para. 3, Sec. 4(2), Art. XIV).
- (d) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress. (Sec. 28(4), Art. VI)

In enabling the foregoing constitutional policies and constitutional limitations, it is hereby declared a policy of the State to internationalise higher education in the country to facilitate the development of a mobile human resource base that will be responsive to the demands of the 21st century. To internationalise higher education, the State shall take an active part in developing the Transnational Higher Education (TNHE) sector. The TNHE sector includes all types and modes of delivery of higher education study programs, sets of courses of study, or educational services, including distance education and study-abroad programs, which involve education systems of a State different from the State where a TNHE provider operates, or programs which may operate independently of any national education system.

It is a basic aim of TNHE to strengthen educational, cultural, social, economic, and political bonds between Philippine and foreign institutions of higher learning, thereby fostering a vibrant exchange of cultures integral to a peaceful living within the global community. It is also a basic aim of TNHE to develop collaborative arrangements between and among Philippine universities and training institutes, on one hand, and foreign universities, on the other, with the desire to build capacity of all partner institutions to operate, manage, and administer post-secondary and graduate programs and to provide opportunities for students and learners to acquire international and foreign diplomas, degrees, and certificates.

In properly developing the TNHE sector, it is hereby declared to be the policy of the State to centralise and delineate, on one hand, the regulation of the TNHE sector, and, on the other hand, the operation of the same, thus creating an arms-length distance between those in charge of regulating the TNHE sector and those who stand to benefit from its incentive framework. In particular, it shall be the State's policy:

- (a) to centralize all forms of regulation, including licensing, monitoring, compliance, evaluation, validation, and enforcement of TNHE economic activities into one governmental body;

- (b) To clearly define the roles and functions of (i) regulator, (ii) project owner, (iii) developer, and (iv) operator, with the paramount aim to ensure arms-length transactions among all actors within the framework of this Act, encourage independent regulatory activity, and ensure that the regulatory agency remains fully independent from any firm or special economic interest; *Provided*, that in all cases there shall be a clear separation between the operation (and operator) of TNHE activities, on one hand, and regulation (and regulator), on the other; and
- (c) To introduce other safeguards in the regulation and operation of the TNHE sector.

SEC. 3. *Purposes, Intent and Objectives.* – It is the purpose, intent and objective of this Act:

- (a) To establish the legal framework for the development, integration, coordination, and planning and monitoring of disaggregated special economic zones for the TNHE sector at large;
- (b) To focus the energies of TNHE stakeholders, international, foreign and local into multiple special economic zones spread across the national territory which would generate employment opportunities here and abroad, and establish backward and forward linkages among industries and sectors in and around the manifold TNHE economic zones;
- (c) To accelerate the formation of knowledge capital of Filipinos, residents, and visitors by providing an attractive climate and clear incentives scheme for TNHE activity;
- (d) To vest the various TNHE economic zones with benefits associated with best practices of special economic zones, including those features of separate customs territories, within the framework of the Constitution, national sovereignty, and territorial integrity of the Philippines.

- (e) To upgrade the present quality of academic programs through collaborative activities, effective international faculty exchange and cooperation in research;
- (f) To strengthen educational, cultural, social, economic and political bonds between and among Philippine and foreign institutions;
- (g) To develop action programs for higher education reform through international linkages in higher education and research; and,
- (h) To promote and facilitate the international mobility of teaching staff and students as an essential part of the overall development of higher education.

SEC. 4. *Definition of Terms.* – The following definitions shall apply to the following terms:

- (a) *Firm.* This Act defines a Firm to be an economic institution and follows an economic definition where such entity engages in profit maximization (for profit-oriented institutions) or in eleemosynary activities (non-profit) which nonetheless are driven by considerations of efficiency, return on investment, business viability and sustainability regardless of stock or non-stock ownership structures. Since Firms, as used in this Act, follow an economic definition, legal and statutory categories normally used to describe businesses such as “corporations,” “partnerships,” “LLPs” and “LLCs” take on a secondary and supportive meaning.
- (b) *Higher Education.* Higher Education refers to any of the various types of education given in post-secondary institutions of learning and usually affords, at the end of a course of study, a named degree, diploma, or certificate indicating qualifications. For purposes of this Act, higher education includes technical and vocational education and training (TVET) institutions such as teacher-training schools, junior colleges, and institutes of

- (c) *Higher Education Institutions (HEIs)*. Higher education institutions are post-secondary education institutions which include universities and colleges, TVET institutions, and specialised institutions that provide advanced degrees in such fields as law, theology, medicine, business, music, and art. HEIs may be public or private entities.
- (d) *Incentives*. Incentives refer to a privilege, benefit, or concession provided by the State to stimulate greater output or investment.
- (e) *Linkages*. Linkages refer to institutional relationships made on the basis of formal or informal agreements which lead to cooperative action resulting in the accomplishment of shared or specific objectives by the parties involved. Linkages include faculty-student exchanges, collaborative research, scholarship grants by partner institutions, jointly administered short- and long-term training, joint curriculum development and (a) enhancement, joint collaboration in library and laboratory enrichment, and cultural exchange.
- (f) *Transnational Higher Education (TNHE)*. Transnational Higher Education includes all types and modes of delivery of higher education study programs, sets of courses of study, or educational services, including distance education and study-abroad programs, which involve education systems of a State different from the State where a TNHE provider operates, or programs which may operate independently of any national education system.
- (h) *TNHE Space*. TNHE Space refers to the sum total of TNHE Zones and Hubs under the jurisdiction of the Philippines, including those Zones and Hubs which may be located in foreign territories but are nonetheless subject to Philippine jurisdiction under the principle of extraterritoriality.

- (i) *TNHE Zones and Hubs.* Zones and Hubs are selected areas with highly developed or which have the potential to be developed into TNHE academic centers, training centers, or institutions of learning. Zones and Hubs may contain any or all of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones, and Tourist/Recreational Centers as defined by R.A. 7916, otherwise known as the Special Economic Zone Act of 1995, and their functional equivalents in existing investment law. “Hubs” may refer to smaller units. For purposes of this Act, “Zones” and “Hubs” are interchangeable. Zones and Hubs may be located in foreign countries provided that they are subject to Philippine jurisdiction under the principle of extraterritoriality.

SEC. 5. *Establishment of TNHE Zones and Hubs.* – The metes and bounds of each TNHE Space are to be delineated and more particularly described in a proclamation to be issued by the President of the Philippines, upon the recommendation of the Transnational Higher Education Development Council (the Council). TNHE Zones and Hubs are to be established or upgraded according to the criteria specified in Sections 6, 7, and 8.

All TNHE Zones and Hubs shall be developed through any of the following schemes:

- (a) Private initiative;
- (b) Local government initiative; and
- (c) National government initiative.

SEC. 6. *Basic Criteria for the Establishment of TNHE Zones and Hubs.* –The President may establish TNHE Zones and Hubs only after a prior evaluation and recommendation of the Council, based on a detailed feasibility study which must conform to the following criteria:

- (a) The proposed area must be identified in the Medium-Term Philippine Development Plan;
- (b) Institutional integrity, reputation, and commitment to academic excellence in light of TNHE best practices;

- (c) Sustainability and viability of operations in light of TNHE best practices;
- (d) The existence of required infrastructure in the proposed TNHE Space, such as roads, telecommunication infrastructure, internet and cable networks, ports, airports, and others; prospective infrastructure which must be an ongoing physical work; and the suitability and capacity of the proposed site to absorb infrastructure;
- (e) The availability of public utilities such as water, sewerage, and electric power supply;
- (f) The extent of vacant lands available for economic development and future expansion as well as adjacent lands available for development of residential areas for TNHE professionals, workers, students, and visitors;
- (g) The availability of skilled, semi-skilled and non-skilled trainable labor force in and around the TNHE Space;
- (h) The area must have a significant incremental advantage over the existing economic zones and its potential stakeholder output can be established;
- (i) The area must be strategically located; and
- (j) The area must be situated where immigration and customs controls can easily be established.

SEC. 7. General classification of incentives and benefits; Graduated scale. – Upon the establishment of TNHE Zones and Hubs, such Zones and Hubs shall benefit from a graduated scale of incentives classified as follows: (a) autonomy and deregulation; (b) taxes and duties; (c) fiscal incentives other than taxes and duties; (d) non-fiscal incentives; and (e) recognition.

- (a) *Autonomy and deregulation.* Autonomy and deregulation refer to the allowances and liberties granted by the State in order to offer a certain level of expedience in transactions and autonomy from state regulation. Autonomy and deregulation may occur on different levels and may include autonomy from monitoring and evaluation by educational regulatory bodies; exemptions from certain processes and requirements in operating the educational institution; relaxation of immigration requirements for visas for educators and students; and

- (b) *Taxes and duties.* Taxes and duties refer to those constitutionally permissible taxes, duties, and their exemptions for educational institutions prescribed by existing laws, including, without limitation, tax exemption or duty free import of education and research equipment; tax exemptions on certain educational activities and investments; separate customs areas for transactions dedicated to educational purposes; and other tax incentives granted to the educational institution, its donors and/or stakeholders.
- (c) *Fiscal incentives other than taxes.* Fiscal incentives other than taxes and duties may include budgetary aspects of the national and local government which prioritize education, including, without limitation, increased budget allocation on education and related services; government equity; long-term land leases under favorable terms; provision of transport and related accessibility services; provision of infrastructure such as buildings and basic services; and relaxed regulations on foreign ownership within constitutionally permissible limits.
- (d) *Non-fiscal incentives.* Non-fiscal incentives pertain to those incentives which may be functionally equivalent to fiscal incentives, including expedited procedures, relaxation of domestic employment processes, visa privileges, state-sponsored media exposure, allowance for foreign currency transactions, and the grant of proprietary rights which have no manageable pecuniary value.
- (e) *Recognition.* Recognition pertains to social credibility and institutional brand equity for purposes of increased access to partnerships, linkages, and increased stakeholdership to the extent that the State may create such social credibility. Recognition may be generated through institutional relationships between and among TNHE stakeholders, LGUs, and government agencies on the basis of formal or informal agreements leading to cooperative action to accomplish shared and specific objectives set forth by the parties. Recognition includes forms of accreditation and may overlap and include other performance indicators in the sense that recognition would mean meeting certain requirements and reaching certain standards. Recognition serves both as an incentive and indicator of success for TNHE stakeholders.

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Recognition includes, without limitation, awarding of title or status by a government body indicating expertise and/or adherence to guidelines and standards; and awarding of achievements in different aspects of education, such as research and development, advances in technology, faculty performance, student performance, alumni performance, facilities, environmental sustainability, curriculum innovation, and social responsibility. The various ways by which institutions may gain recognition include institution-wide recognition/accreditation, program-specific recognition/accreditation, or research-based recognition/accreditation.

Incentives found under the foregoing (a)—(e) general classification system shall be graduated or phased into at least three (3) Tiers. Each Tier shall be a pilot phase or test phase for the next succeeding Tier. The Council, pursuant to its powers and functions under Chapter 2, shall from time to time prescribe a more particularized set of incentives along with their performance benchmarks for every TNHE Zone or Hub to meet, if it so chooses to meet, in a manner generally to be depicted as follows:

| TIER | INCENTIVE/S | PERFORMANCE BENCHMARKS FOR INCENTIVE'S |
|-----------------------|---|---|
| 1 or “Pioneer status” | Baseline benefits set forth in this Act, which include those found in Sections 9, 10, 11, 12, 23, 24, 32, 34, 36, 37, 40, and 51. | Baseline performance benchmarks set forth in this Act, which include those found in Sections 6, 8, 9, 12, 23, 24, 27, 28, 29, 30, 31, 32, 39, 41, 42, 43, and 53. |
| 2 | As prescribed by the Council under proportionality principles. | As prescribed by the Council under proportionality principles. |
| 3 | Id. | Id. |
| 4 | Id. | Id. |

The Council may prescribe more than three (3) Tiers in its sound discretion.

The Council shall ensure that performance benchmarks shall be proportionate to their corresponding incentives between and among tiers. TNHE Zones and Hubs may ascend or descend from tier to tier according to the degree to which they meet a particular tier's performance benchmarks: *Provided*, that TNHE Zones and Hubs shall not be obliged to ascend to a higher tier; *Provided, further*, that the absence of such choice to make the ascension shall not be taken against the TNHE Zone or Hub in future applications; *Provided, however*, that once a TNHE Zone or Hub applies for a higher tier and if such application is denied, then such denial shall be considered by the Council as but one negative factor in any future application for ascension.

SEC. 8. *Substantive criteria for setting performance benchmarks.* In further defining and prescribing the multi-tiered performance benchmarks as described in the immediately preceding section, the Council shall follow an output-driven and outcome-based model of performance. It shall ascribe weight to the following performance indicators:

- (a) *International linkages.* Akin to recognition defined in Section 7, international linkages refer to institutional relationships made on the basis of formal or informal agreements which lead to cooperative action resulting in the accomplishment of shared or specific objectives by the parties involved. International linkages include the matching of partnerships, stakeholderships, and investment priorities between and among international entities and TNHE Zones and Hubs. International linkages serve both as incentives and as indicators for successful performance. In considering whether a TNHE Zone or Hub meets this criteria, the Council shall consider whether such Zone or Hub has acquired international accreditations and linkages or are at least committed and have the capacity to undergo the process of international accreditation. Aside from accreditation, international linkages include the development of valuable networks through alumni relations and faculty exchanges that eventually translate into greater economic and cultural transactions between and among partnering countries.

- (b) *Facilities and infrastructure.* This pertains to the physical capacity of the school's facilities and infrastructure to address the needs of the programs in accordance with set standards, as well as provide for the welfare of students and teachers. It also pertains to the physical capacity to provide the research and development expertise the TNHE Zone or Hub purports to achieve.
- (c) *Faculty and faculty diversity.* This pertains to the credentials of the faculty in terms of their education, quality of life, and their involvement in research and other institutions in their field. Greater weight is given to institutions with a higher percentage of full-time faculty holding doctorates or equivalent degrees in their fields. Visiting faculty from other regions, countries, cultures, and backgrounds are encouraged. There should also be a sufficient number of qualified faculty to adhere to a faculty to student ratio under internationally accepted best practices.
- (d) *Student diversity.* The promotion of student diversity includes the promotion of a respectful classroom climate under egalitarian norms and principles; encouraging plurality of the contribution of diverse perspectives based on differences in race, gender, religion, and culture, implicit and explicit; use and monitoring of vernacular in ways that consider implicit assumptions, exclusions, overgeneralizations, stereotypes, and social discrimination. Student diversity also refers to extrinsic factors untied to substantive social norms, such as domestic student to foreign student ratio; international mobility of students; student ratio by region; country to country student composition; studies-abroad programs in place; and the number of diplomas granted to foreign students.
- (e) *Research and development.* This refers to the combined research output of the TNHE Zone or Hub. Research and development or R&D can be measured in terms of the number and quality of articles and papers published in international journals and other publications and/or used in international fora and conferences. Publications include institutional publications or those publications whose authorship belongs to the TNHE Zone or Hub. R&D includes facilities, infrastructure and technologies available to support and develop research activities, and the existence and operation of research centers.

- (f) *Curriculum innovation.* Curriculum innovation pertains to the manner and degree to which curricula prescribed by the TNHE Zone or Hub are relevant and adaptable to current and global developments, trends, and values. Curriculum innovation includes the assessment of whether certificates, diplomas and degrees granted by the TNHE Zone or Hub conform to internationally accredited programs by reputable international accreditation bodies; whether certificates, diplomas, and degrees granted by the TNHE Zone or Hub are accredited both in the sending and receiving jurisdictions; the presence of study-abroad programs whose certificates, diplomas or degrees are accredited in both the sending and receiving jurisdictions; the accreditation and reputation of partner institutions; and cross-border delivery of academic services. The Council may consider, *inter alia*, gender sensitivity, language diversity, racial and ethnic sensitivity, and building international perspectives, as values in determining curriculum innovation
- (g) *Graduation and retention rate.* This pertains to the number of first-year students who graduate within a given time period in light of course requirements and internationally acceptable best practices.
- (h) *Alumni participation.* This may be measured in terms of donations, endowment building, network building and network database management, alumni-initiated partnerships and linkages, extent and reach of foreign alumni, alumni cohesiveness.
- (i) *Job placement and career services.* This generally refers to the effectiveness of in-house career services which educate, connect, and advise students and new graduates about opportunities for internships, externships, fellowships, post-graduation employment opportunities, and career advancement. Career services include advisory services for further graduate or advanced studies and study-abroad programs. Job placement services include the degree to which the TNHE Zone or Hub can structurally align its graduates to both general employment demands and specific industry demands in local and foreign markets. Special consideration shall be placed on entry-level income and mid-career income for lateral hires, as the case may be.

For employment opportunities which do not consider income as a principal indicator of advancement, special consideration shall be placed on entry-level title, lateral title, non-monetary benefits, employer reputation, social impact of the position, and similar factors.

- (j) *Alumni leadership and performance.* This criterion includes entry-level and mid-career-level income of alumni; for public interest positions, the international reputation of the positions which alumni hold; alumni performance and passing rates in licensure examinations, especially those examinations administered by jurisdictions in major economics beyond the Philippines; performance and passing rates in internationally acceptable standardised tests and testing methods by foreign jurisdictions; the extent to which the skillsets of alumni meet legitimate employment demand in domestic and foreign markets; alumni mobility and transferability of one's skill set across jurisdictions or industries;
- (k) *Grant and endowment management.* This pertains to how effective the TNHE Zone or Hub can build and manage an endowment corpus for purposes of sustaining a system of scholarships and fellowships, such as the sustainability of its endowment, the efficiency of grant compliance measures and grant administration, progressive per capita-endowment ratios, and the degree to which the endowment can fund operating expenses otherwise financed by tuition.
- (l) *Upstream and downstream industry development.* Upstream industry development refers to the development of industries, products, services, and processes at the extraction stages occurring prior to and leading up to the actual use of such products, services, and others by the TNHE Space. Downstream industry development refers to the development of industries which use or deploy the products, services, and processes of the TNHE Space. Thus, upstream and downstream industry development includes the development of industries, products, and others between and among TNHE Zones and Hubs and their partner institutions.
- (m) Other criteria analogous to the foregoing and to those set forth in Sections 6 and 7.

The Council may also ascribe weight to the following related outcomes and measures of success for performance:

- a) Environmental sustainability
- b) Gender and race sensitivity
- c) Social responsibility
- d) Housing facilities, both in-house and affiliated housing
- e) Health facilities and medical services
- f) Retirement facilities
- g) Job generation.
- h) Other quasi-indicators analogous to the foregoing

SEC. 9. *TNHE Zones and Hubs to be disaggregated, physically dispersed, and decentralised academic communities with backward and forward linkages.* – Within the framework of the Constitution, TNHE Zones and Hubs shall be developed, as far as practicable, into physically dispersed, disaggregated, decentralised, autonomous, and self-sustaining academic centers with minimum national and local government intervention. Each TNHE Zone and Hub shall be equipped with transportation, telecommunications, and other facilities and access points needed to generate backward and forward linkages with industries and employment opportunities for its own residents and residents of nearby towns and cities.

The TNHE Zone or Hub shall administer itself on economic, financial, industrial, tourism development and such other matters within the exclusive competence of the national government to the extent delegable by law.

The TNHE Zone or Hub shall establish mutually beneficial academic and economic relations with other entities within the country and with foreign, regional, and international TNHE stakeholders and firms.

Foreign firms owned or controlled by non-Philippine nationals in whatever proportion may set up enterprises within the TNHE Space, either by themselves, in joint venture with Philippine nationals from any sector, or in public-private partnership with the national or local government, including government-owned or -controlled corporations, found within or outside the allotted TNHE Space: *Provided*, that the Council may require a minimum investment for any stakeholder or firm in the TNHE Space in the form of freely convertible currency: *Provided, further*, that the investment shall be proportionate to the requirements of the academic program the stakeholder is pursuing and shall fall under the priorities, objectives, and limits provided for in this Act.

SEC. 10. TNHE Zone or Hub to be operated and managed as separate customs territories. – The TNHE Zone or Hub, wherever located, shall be administered by the Council as a separate customs territory.

The Council is hereby vested with the authority to issue certificates of origin for academic products and services issued in each TNHE Space in accordance with prevailing rules of origin and internationally accepted best practices, as well as with pertinent regulations of the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and the Department of Trade and Industry (DTI).

SEC. 11. *Perimeter and area security.* – The security and order of the TNHE Space and the security of perimeter fences of TNHE Zones and Hubs shall be the responsibility of the national government in coordination with the Council and the Department of Interior and Local Government (DILG). The Council may provide and establish the TNHE Space's internal security.

SEC. 12. *Immigration.* – Any natural person who is a stakeholder intending to reside in the TNHE Space and whose initial investment, whether held in trust or in full title, is at least Two Hundred Fifty Thousand Dollars (\$250,000.00), his/her spouse and all dependent children under twenty-one (21) years of age, shall be granted permanent resident status within the TNHE Space. They shall have freedom of ingress and egress to and from the TNHE Space without any need of special authorisation from the Bureau of Immigration (BI).

The Council shall issue working visas renewable every two (2) years to aliens who hold highly-technical skills which no Philippine national within the TNHE Space possesses, with no further certification from any national agency or local government required. The names of aliens granted permanent resident status and working visas by the Council shall be reported to the Bureau of Immigration within thirty (30) days from issuance thereof.

CHAPTER II

GOVERNANCE OF ACADEMIC SPACE

SEC. 13. *The Transnational Higher Education Development Council.* – There is hereby created a public corporation within the meaning of R.A. 10149 and under the oversight of the Governance Commission for Government-Owned or -Controlled Corporations (GCG), to be known as the Transnational Higher Education Development Council (Council).

The Council shall consist of seven (7) regular members with voting power. The term of office of each regular member is six (6) years and in all cases shall be co-terminous with the tenure of the President. The President shall appoint the members of the Commission under the following criteria:

- (a) Each member of the Council shall be a citizen of the Philippines.
- (b) All members must be selected with special reference to his or her training and experience in the field of transnational higher education.
- (c) No person actively engaged or having a direct material interest in any activity in any TNHE Space shall be a member of the Council: *Provided, however,* that persons engaged in teaching, research and writing done outside of the TNHE Space are not disqualified for appointment solely for these reasons.
- (d) One member must be a certified public accountant and possess at least five (5) years of expertise in general accounting, corporate finance, auditing, management, or economics.
- (e) At least one member must be a lawyer and possess at least five (5) years of expertise in international law.

The Council shall have a President and General Manager (PGM) who shall be selected by a majority vote of the Council immediately following organisation. The PGM shall be of proven probity and integrity, and a holder of an advanced degree in any of the following fields: economics, business, public administration, law, management or their equivalent, and with at least ten (10) years of relevant working experience preferably in the field of management or public administration.

All regular members shall devote full time to their duties of office and shall not pursue or engage in any other business, occupation, or other gainful employment, save for teaching, research and writing work done outside of the TNHE Space.

In addition to the regular members of the Council, there shall be six (6) *ex officio* members without voting power: (a) the Chairperson of the Commission on Higher Education; (b) the Director-General of the Philippine Economic Zone Authority (PEZA); (c) the Director-General of the Technical Education and Skills Development Authority (TESDA); (d) the Director-General of the National Economic and Development Authority (NEDA); and (e—g) three representatives from the private sector in the TNHE Space. These private sector representatives (e—g) may include representatives from international or local accrediting bodies for HEI, international or local federations or consortiums for HEI, and international and local awarding institutions for specific fields of interest.

SEC. 14. *Functions and powers of the Council.* – The Council shall have the following functions and powers:

- (a) Set the general rules and policies on the establishment and operations of TNHE Zones and Hubs according to Sections 6 and 7 and other provisions of this Act.
- (b) Register, regulate and generally supervise stakeholders and firms in the TNHE Zones and Hubs in an efficient and decentralised manner; *Provided*, that in all cases the Council shall confine itself to regulatory activities only and shall not engage in acts of management or operation of any stakeholder, firm, or person within the TNHE Space.
- (c) Accredite stakeholders and firms in TNHE Zones and Hubs for purposes of availing the various incentives of this Act.
- (d) Coordinate with local government units (LGUs) and national government bodies in the exercise of general supervision over the development, plans, activities and operations of TNHE Zones and Hubs.
- (e) Coordinate the formulation and preparation of the development plans of the different stakeholders within the TNHE Space and require meaningful consultations between and among TNHE stakeholders, LGUs, and appropriate national or regional land use committee/s.
- (f) Develop the TNHE Space according to the principles and provisions set forth in this Act.
- (g) Review proposals submitted to it by existing and prospective TNHE stakeholders, including the national government, LGUs, and the private sector at large, for the establishment and/or upgrade of TNHE Zones and Hubs based on the criteria principally set forth under Sections 6, 7, and 8, and endorse to the President the establishment or upgrade of such Zones and Hubs. Following endorsement, the Council shall facilitate and assist in the organisation of said TNHE Zones and Hubs: *Provided, however*, that in no case shall the Council directly or indirectly operate, or engaged in acts of operation over activities of such Zones and Hubs, and firms and stakeholders in the TNHE Space.

- (i) Regulate and undertake the establishment, operation and maintenance of utilities, services and infrastructure in the TNHE Space, such as heat, light and power, water supply and sewerage, internet and cable networks and necessary telecommunication facilities, transportation, port services, roads, bridges, structures, and others, and to fix just, reasonable and competitive rates, charges and fees therefore: *Provided*, that in establishing, operating, and maintaining public utilities and public services, the Council, in coordination with local government units concerned and appropriate agencies, may construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license, bulk purchase from the private sector, build-operate-transfer or similar schemes, joint venture, and public-private partnerships.
- (j) Approve the annual budget of the Council and the development plans of all TNHE Zones and Hubs.
- (k) Create, operate and/or contract to operate such agencies and functional units or offices of the Council as it may deem necessary.
- (l) Adopt, alter and use a corporate seal; make contracts, lease, own or otherwise dispose of personal or real property; sue and be sued; and otherwise carry out its duties and functions as provided for in this Act.
- (m) Coordinate with NEDA, PEZA, CHED, TESDA, the Department of Education (DepEd), LGUs, appropriate government agencies, and relevant TNHE stakeholders and TNHE associations, for policy and program formulation and implementation.
- (n) Monitor and evaluate the development and requirements of qualified stakeholders and firms and recommend to LGUs and other appropriate authorities the location, incentives, basic services, utilities and infrastructure required or to be made available for such stakeholders and firms.
- (o) Enter into agreements, joint ventures, consortiums, and other contracts and undertakings, including Memoranda of Understanding (MOUs), with LGUs and government agencies to implement the provisions of this Act.

- (p) Exercise all necessary and incidental powers and functions within the meaning of this Act; and
- (q) Render annual reports to the President and the Congress.

SEC. 15. *Powers and functions of the President and General Manager (PGM).*

– The PGM shall be the overall coordinator of the policies, plans and programs of all TNHE Zones and Hubs. As such, he or she shall provide overall control and supervision and general direction to the development and operations of the TNHE Space. He or she shall determine the structure and the staffing pattern and personnel complement of the Council and establish regional offices, when necessary, subject to the approval of the Council.

The PGM shall have the following specific powers and responsibilities:

- (a) To safeguard all the lands, buildings, records, monies, credits and other properties and rights of TNHE Zones and Hubs.
- (b) To ensure that all stakeholders, firms, officials, employees, consultants and contractors of NHE Zones and Hubs are properly discharging their respective duties.
- (c) To give such information and recommend such measures to the Council, as he or she shall deem advantageous to the TNHE Zones and Hubs.
- (d) To require TNHE Zones and Hubs to submit to the Council their ongoing and proposed projects, work and financial programs, annual budget of receipts, and expenditures.
- (e) To represent the Council in all its business matters and sign on its behalf after approval of the Council, all its bonds, borrowings, contracts, agreements and obligations made in accordance with this Act.
- (f) To acquire jurisdiction, as he or she may deem proper, over the protests, complaints, and claims of the residents, stakeholders, and firms in the TNHE Space concerning administrative matters;
- (g) To recommend to the Council the grant, approval, upgrade, downgrade, refusal, amendment or termination of franchises, privileges, licenses, permits, contracts, and agreements of TNHE Zones and Hubs in accordance with the policies set by the Council;

- (h) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the PGM or his/her authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding.
- (i) To take such emergency measures as may be necessary to avoid fires, floods and similar exigencies, and mitigate the effects of storms and other natural or public calamities.
- (j) To prepare and make out plans for the physical and economic development of the TNHE Space, including zoning and land subdivision, and prepare such rules and regulations which shall be submitted to the Council for approval; and
- (k) To perform such other duties and exercise such powers as may be prescribed by the Council, and to implement the policies, rules and regulations set by the Council.

SEC. 16. *Administration of the TNHE Space.* – Administration of the TNHE Space shall principally lie with the private sector. The Council shall encourage the private ownership, private management, and private operation of the TNHE Space to the extent allowable by this Act and the Constitution.

For TNHE Zones and Hubs that are not privately-owned, managed or operated, such TNHE Space shall be organised, administered, managed and operated by (a) local government initiative or (b) national government initiative, including those of government-owned and – controlled corporations (GOCCs) and government financial institutions (GFIs).

SEC. 17. *Advisory Bodies.* – For purposes of administration and at the option of the Council, Advisory Bodies may be created. Advisory bodies may be created depending on the needs and considerations of a TNHE-related sector, sub-sector, region, market, TNHE audience, employment, discipline, or skill-set. In creating advisory bodies and forming its members, the Council may consider, *inter alia*, representatives of major associations of TNHE stakeholders in the TNHE Space; representatives of the Philippine academia who are not doing business in the TNHE Space; representatives of the international academia who are not doing business in the TNHE Space; governors of the provinces and mayors of the municipalities or cities where relevant TNHE Zones and Hubs are located; representatives of accredited labor unions in the TNHE Space; representatives of non-TNHE stakeholders who do business with such stakeholders, whether found within or outside the TNHE Space; and representatives of PEZA, NEDA, and the Board of Investments (BOI), the Bureau of Customs, and the Bureau of Immigration.

Advisory bodies shall have the following functions:

- (a) Advise the Council and THNE stakeholders on matters pertaining to policy initiatives;
- (b) Assist THNE stakeholders, firms, and labor groups in setting and resolving problems arising from their relations, as well as assist inter-THNE stakeholder problems and issues;
- (c) Advise THNE stakeholders in developing, pursuing, and implementing incentives and operations according to law; and
- (d) Exercise such other functions as the Council may, from time to time, prescribe.

SEC. 18. *Personnel.* – The Council shall provide for an organisation and staff of officers and employees, and upon recommendation of the PGM, appoint and fix the remunerations and other emoluments: *Provided*, that the Council shall have the final authority to appoint, promote, remove, transfer, assign and reassign its officers, any provision of existing law to the contrary notwithstanding: *Provided, finally*, that the PGM may exercise such powers of appointment, promotion, and others upon the authority of the Council.

All positions under the Council shall be governed by compensation, position, classification systems, and qualification standards provided by the Governance Commission for Government-Owned or -Controlled Corporations (GCG) under R.A. 10149. In the conduct of classifying and itemizing its positions, the Council may request for advisory opinions from the GCG.

Officers and employees of the Council, including all Members of the Council, shall not engage directly or indirectly in partisan activity or take part in any election, except to vote.

SEC. 19. *Investigation and inquiries.* – Upon a written formal complaint made under oath, which on its face provides reasonable basis to believe that some anomaly or irregularity might have been committed, the PGM, the Council, or a duly appointed representative of the Council, shall have the power to inquire into the behavior of firms or employees of TNHE Zones and Hubs and to conduct investigations, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidences: *Provided*, that to arrive at the truth, the investigator(s) may grant immunity from prosecution to any person whose testimony or whose possessions of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by him/her or under the authority of the Council.

SEC. 20. *Prohibition against holding any other office.* – The PGM, Members of the Council, administrators, officials and staff or assistants of the Council shall not hold any other office or employment within or outside the TNHE Space during their tenure, and shall not, during their tenure, directly or indirectly, practice any profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Council or the national government, or any subdivision, agency, or instrumentality thereof, including any GOCC or its subsidiary: *Provided*, that such personnel may occupy teaching, research and writing positions outside the TNHE Space.

SEC. 21. *Full disclosure of financial, business, and stakeholder interests.* – All officials and employees of the Council shall, upon assumption of office, make full disclosure of their financial, business, and stakeholder interests, including membership or affiliation in non-profit organisations, local and foreign.

CHAPTER III

OPERATIONS WITHIN THE ACADEMIC SPACE

SEC. 22. *Development strategy of TNHE Spaces.* - The strategy and priority of development of each TNHE Space established pursuant to this Act shall be formulated by the Council, in coordination with CHED, TESDA, PEZA, NEDA, BOI, DTI, DILG, Bureau of Immigration, Bureau of Internal Revenue (BIR), Bureau of Customs, and DepEd. All development strategies shall be consistent with the priorities of the national government, including the Medium-Term Philippine Development Plan, Investment Priorities Plan, and Millennium Development Goals. It shall be the policy of the Council to impel private sector leadership in the development of the TNHE sector, using any of the schemes allowed in existing law and regulations, including public-private partnerships.

SEC. 23. *Fiscal incentives.* – All TNHE Zones and Hubs operating within TNHE Spaces shall be entitled to the fiscal incentives as provided for under R.A. 7916, as amended, which is the law establishing the PEZA, and/or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as the case may be.

Upon attaining Tier 1 (Pioneer Status), all TNHE Zones and Hubs which meet the definition of “non-stock, non-profit educational institutions” within the meaning of the National Internal Revenue Code (NIRC) shall be entitled to all tax incentives granted to such entities by the NIRC, BIR rules and regulations, and constitutionally prescribed tax incentives found in the provisions of the Constitution which include, *inter alia*, Section 4, Article XIV, and Section 28, Article VI, as discussed in Supreme Court decisions.

To the extent applicable, TNHE stakeholders shall enjoy the same benefits, tax credits and incentives provided for in the Export Development Act of 1994.

SEC. 24. *Exemption from national and local taxes for proprietary TNHE institutions; sunset clauses.* – All educational institutions within the TNHE Space which do not satisfy the definition of “non-stock, non-profit educational institutions” within the meaning of the NIRC are deemed, for purposes of this Act, to be proprietary educational institutions.

SEC. 24. All proprietary educational institutions, upon attaining Tier 1 (Pioneer Status) as set forth in this Act, shall be subject to the taxes, exemptions, and other duties and privileges under the NIRC, notably Section 27, Title II, Ch. IV thereof, and the implementing rules and regulations of the BIR.

The Council, upon prior consultation with the BIR or the Bureau of Customs as the case may be, may grant additional tax incentives within the parameters of existing tax laws such as incremental exemptions from income tax, whether corporate or personal income tax, standard or itemised deductions, partial or full exemption from Value-Added Tax, certain exempt transactions, incremental exemptions from customs duties, and other tax holidays and benefits, for those proprietary educational institutions which successfully gain Tier 2 and higher; *Provided*, that at all times the Council shall observe proportionality principles in granting tax and customs incentives; *Provided, further*, that the Council shall encourage the use of sunset clauses and other time-sensitive criteria in granting tax incentives; *Provided, finally*, that the Council may, in its discretion and upon prior consultation with the Board of Investments, prescribe such restrictions on dividends, rules for reinvestment, and similar restrictions for proprietary educational institutions according to proportionality principles.

SEC. 25. *Other TNHE stakeholders and firms.* – All TNHE stakeholders and firms operating within the TNHE Space which do not qualify as “non-stock, non-profit educational institutions” nor as “proprietary educational institutions” shall be subject to local and national taxes and customs duties according to general principles of taxation; *Provided, however*, that if such stakeholders or firms qualify for fiscal incentives under other laws, including, without limitation, the Special Economic Zone Act of 1995 (the PEZA Law) and the Omnibus Investment Code of 1987, then such stakeholders and firms may so avail of those incentives within the TNHE Space.

SEC. 26. *Applicable national and local taxes.* – All entities, natural and juridical, which are not accredited stakeholders or firms pursuant to this Act and the rules and regulations of the Council, shall be subject to national and local taxes under general principles of taxation and the Local Government Code. Physical placement alone within a TNHE Zone or Hub or business activity alone with accredited TNHE stakeholders and firms, shall not be deemed as a sufficient condition for exemption from national and local taxes.

SEC. 27. *Prohibition on purposeful differential treatment in enrollment; International schools.* – All enrollment shall not be differentiated solely on the basis of sex or sexual orientation, gender, age, religion or religious affiliation, ethnicity, nationality, region, citizenship, residence, and disability or handicap.

Pursuant to Section 4(2), Article XIV of the Constitution, it is hereby declared that this Act shall be the enabling law for TNHE stakeholders to establish international schools, centers, courses, and programs for foreign diplomatic personnel, their dependents, and for other foreign temporary residents; schools for religious groups and mission boards; and other international schools; *Provided*, that all TNHE stakeholders shall enforce a need-blind admission policy where admission decisions do not consider the applicant's financial situation. Following admission, the academic service provider is required to implement a balanced and diversified enrollment, at least one-fourth of which shall comprise citizens of the Philippines. To meet a balanced and diversified enrollment policy and defray what can otherwise be prohibitive costs for studies, the academic service provider must provide reasonable opportunities for financial aid.

SEC. 28. *Ownership.* – Pursuant to Section 4(2), Article XIV of the Constitution, it is hereby declared that this Act shall be the enabling law for TNHE stakeholders to own universities, schools, centers, and institutes under the following criteria:

- (a) For educational institutions established by religious groups, mission boards, institutions established for foreign diplomatic personnel and their dependents, and educational institutions for foreign temporary residents, ownership may be vested in aliens or juridical entities wholly owned by such aliens.
- (b) For all other educational institutions, ownership shall be vested in citizens of the Philippines or domestic juridical entities at least sixty *per centum* of whose capital is owned by such citizens.

SEC. 29. *Control and administration.* – Pursuant to Section 4(2), Article XIV of the Constitution, control and administration of universities, schools, centers, and institutes regardless of category, for purposes of this Act, shall be vested in citizens of the Philippines: *Provided*, that this control and administration requirement is deemed met once line positions on the level of “President,” “Dean,” “Principal,” “Chancellor,” and other functionally equivalent positions, and an absolute majority of the membership of the governing body or board, are held by citizens of the Philippines

SEC. 30. *Negative list for ownership, control, and administration; default clauses.* – Notwithstanding the foregoing provisions on ownership, control, and administration, the Council in its discretion may, from time to time, set forth a negative list of institutions, positions, or functions which attend certain positions. In specifying ineligible activities in the negative list, the Council shall:

- (a) consult with CHED, TESDA, PEZA, Board of Investments, NEDA, DepEd, and representatives of TNHE stakeholder groups;
- (b) be guided by considerations of national interests, national security, territorial integrity, peace, order, and stability, and international criminal activity;
- (c) make public all criteria for approval or denial;
- (d) authorise, to the extent constitutionally permissible and administratively practicable, the automatic approval of an application if no ruling had been issued within a specified review period.

SEC. 31. *Applicability of banking laws and regulations.* – Existing banking laws and Bangko Sentral ng Pilipinas (BSP) rules and regulations shall apply to all banks and financial institutions to be established in the TNHE Space and to other TNHE-registered entities to the extent of their applicability. Among other pertinent regulations, these include those governing foreign exchange and other current account transactions (trade and non-trade), local and foreign borrowings, foreign currency deposit units, offshore banking units, and other financial institutions under the supervision of the BSP.

SEC. 32. *After tax profits.* – Without prior BSP approval, after tax profits and other earnings of foreign investments in TNHE-registered entities in the TNHE Space may be remitted outward in the equivalent foreign exchange in accordance with this Act, and through any of the banks licensed by the BSP in the TNHE Space: *Provided*, however, that such foreign investments in said entities have been previously registered with the BSP.

MODEL LAW

SEC. 33. *Eminent domain.* – The areas comprising a TNHE Space may be expanded or reduced by the State when necessary. For this purpose, the government, through the Council, shall have the power to acquire, either by purchase, negotiation or condemnation proceedings, any private lands within or adjacent to a TNHE Space for:

- (a) Consolidation of lands for zone development purposes;
- (b) Acquisition of right of way to a TNHE Space;
- (c) Environmental protection of natural assets valuable to the prosperity of a TNHE Space; and
- (d) Analogous public purposes as defined by Philippine jurisprudence.

If in the course of exercising eminent domain powers, any person who has been occupying a parcel of land within the TNHE Space has to be evicted, the Council shall provide proper disturbance compensation. In the case of displaced agrarian reform beneficiaries, the benefits and relocation system under the Comprehensive Agrarian Reform Law shall apply.

SEC. 34. *Leases of lands and buildings.* – Lands and buildings in each TNHE Zone or Hub may be leased to foreign investors for a period not exceeding fifty (50) years renewable once for a period of not more than twenty-five (25) years, as provided for under Republic Act No. 7652, otherwise known as the Investors' Lease Act. The leasehold right acquired under long-term contracts may be sold, transferred or assigned, subject to the conditions set forth under Republic Act No. 7652.

SEC. 35. *Land conversion.* – Agricultural lands may be converted for residential, commercial, industrial and other non-agricultural purposes, subject to the conditions set forth under the Comprehensive Agrarian Reform Law and other applicable laws.

SEC. 36. *Shipping, air transport, and registry.* – The Council shall establish reasonable regulations for private shipping and air transport of goods, including container terminal operations and related business, in coordination with the Department of Transportation and Communications.

SEC. 37. *Protection of the environment.* – The Council, in coordination with the appropriate agencies, shall take concrete and appropriate steps and enact proper measures for the protection of the local environment.

MODEL LAW

SEC. 38. *Termination of business.* – THEN stakeholders in TNHE Zones and Hubs who desire to terminate business or operations shall comply with such requirements and procedures which the Council shall set, particularly those relating to the clearing of debts. The assets of the closed enterprise can be transferred and the funds can be remitted out of the TNHE Space subject to the rules, guidelines and procedures prescribed jointly by the BSP, the Anti-Money Laundering Council, the Department of Finance, and the Council.

SEC. 39. *Registration of stakeholdership or academic spaces.* – Stakeholders within a designated TNHE Zone or Hub shall register with the Council to avail of all incentives and benefits provided for in this Act.

Firms desiring accreditation but lie outside existing TNHE Zones and Hubs must file a concurrent application for the establishment of a TNHE Zone or Hub, based on the criteria set forth in this Act. The portion of the application seeking the establishment of a TNHE Zone or Hub shall be reviewed by the Council according to, *inter alia*, the criteria set forth under Sections 6, 7, and 8, and, if the same are met, endorsed to the President.

SEC. 40. *One-Stop Shops.* – The Council shall establish “one-stop shops” or centers which seek to consolidate and centralise all administrative processing in sufficient size and, which shall likewise be geographically dispersed for the purpose of facilitating the registration of new stakeholders in the TNHE Space. Thus, all appropriate government agencies that are involved in registering, licensing or issuing permits to stakeholders shall assign their representatives to the TNHE Space to attend to stakeholder requirements. The Council shall enter into MOUs with LGUs and appropriate government agencies for purposes of this Section.

CHAPTER IV

LABOR STANDARDS AND LABOR RELATIONS

SEC. 41. *Labor and management relations.* - Except as otherwise provided in this Act, labor and management relations in the TNHE Space shall be governed by existing labor laws. Employees and personnel of TNHE Zones and Hubs shall enjoy working conditions not less than those provided under the Philippine Labor Code and other relevant laws, issuances, rules and regulations of the Philippine government and the Department of Labor and Employment.

SEC. 43. *Master contracts.* - The Council, in coordination with the Department of Labor and Employment, shall prescribe master employment, independent contractor, and consulting contracts for all TNHE stakeholder staff members, workers, and contractors, the terms of which provide salaries and benefits not less than those provided under this Act, the Philippine Labor Code, as amended, and other relevant issuances of the national government. The Council, in its discretion, may prescribe master contracts for other legal forms and legal relationships.

CHAPTER V

NATIONAL GOVERNMENT AND OTHER ENTITIES

SEC. 44. *Relationship with NEDA.* - The Council shall determine the development goals for the TNHE sector within the framework of national development plans, policies and goals, and the PGM shall, upon approval by the Council, submit TNHE sector-specific development plans, programs and projects to NEDA for inclusion in and as inputs to the overall regional development plan.

SEC. 45. *Relationship with Local Government Units.* - Except as herein provided, the LGUs where TNHE Zones and Hubs are situated in whole or in part shall retain their autonomy and identity in accordance with Republic Act No. 7160, as amended, otherwise known as the Local Government Code of 1991.

SEC. 46. *Transfer of functions and resources.* - The relevant functions and resources of the Board of Investments, CHED, TESDA, and/or the PEZA over transnational education in relation to higher education shall be transferred to the Council. They are hereby detached from their mother agencies and attached to the Council for policy, program and operational supervision.

Government personnel whose services are not retained by the Council or any government office shall be entitled to separation pay and such retirement and other benefits they are entitled to under the laws then in force at the time of their separation.

CHAPTER VI

MISCELLANEOUS PROVISIONS

SEC. 47. *Applicability of the Special Economic Zone Act of 1995.* — Republic Act No. 7916, as amended, otherwise known as the Special Economic Zone Act of 1995, shall apply in supplementary character.

SEC. 48. *Appropriation.* — The amount of [sum in text] (P ____, ____, ____) is hereby authorized to be appropriated out of the funds in the National Treasury for the initial operation of the Council. Thereafter, any sum as may be necessary to augment its operations shall be included in the General Appropriations Act.

Additional funding may come from the following sources:

- (a) The proceeds from the rent of lands, buildings, and other properties, if owned by the Council.
- (b) The proceeds from fees, charges and other revenue-generating instruments such as public-private partnerships, joint ventures, and build-operate-transfer schemes, which the Council is authorized to impose and collect under this Act.
- (c) Fees from licensing agreements which the Council authorized or entered into.
- (d) The proceeds from bonds, both domestic and foreign, which the Council authorized to float.
- (e) The advance rentals, license fees, and other charges which the Council is authorized to impose under this Act and for which a stakeholder is willing to advance payment for.
- (f) Reasonable service charges in service level agreements, MOUs, and other service agreements which the Council authorized or entered into.

SEC. 49. *Authority of the President to advance funding.* — The President of the Philippines is hereby authorized to advance out of the savings of the Office of the President such funds as may be necessary to effect the organization of a TNHE Zone or Hub, which advances shall be reimbursed by the Council at reasonable terms and conditions.

SEC. 50. *Separability clause.* – The provisions of this Act are hereby declared separable, and in the event one or more of such provisions or part thereof are declared unconstitutional, such declaration of unconstitutionality shall not affect the validity of the other provisions thereof.

SEC. 51. *Interpretation/Construction.* – The powers, authorities and functions that are vested in the Council and the TNHE Zones and Hubs concerned are intended to establish decentralization of governmental functions and authority as well as an efficient and effective working relationship between the Council, the TNHE Space, the central government, and LGUs.

In case of doubt in construing the meaning of the terms and phrases of this Act, resort may be had to the meaning of functionally equivalent and analogous terms and phrases found in existing investment laws, including, in particular, R.A. 7916, otherwise known as the Special Economic Zone Act of 1995, and Executive Order No. 226 (1987), otherwise known as 1987 Omnibus Investments Code (Executive Order No. 226), as amended.

The provisions of this Act must be liberally construed to give maximum effect to its objectives, principles, policies, and enforceability. The omission of an enumerated power alone shall not be construed as one giving rise to an ultra vires act.

SEC. 52. *Repealing clause.* – All laws, acts, presidential decrees, executive orders, proclamations and/or administrative regulations which are inconsistent with the provisions of this Act, are hereby amended, modified, superseded or repealed accordingly.

SEC. 53. *Implementing rules and regulations.* – The Council, in consultation with CHED, NEDA, TESDA, PEZA, Board of Investments, DepEd, Bureau of Customs, Bureau of Immigration, and representatives from the technical staff of the Committees on Economic Affairs and Higher Education of both Houses of Congress shall formulate the implementing rules and regulations of this Act within one hundred eighty days (180) days after the approval of the Act. Such rules and regulations shall take effect fifteen (15) days after their publication in a newspaper of general circulation in the Philippines.

MODEL LAW

SEC. 54. Effectivity. – This Act shall take effect fifteen (15) days following the completion of its publication in two (2) national newspapers of general circulation.

Approved,



CONCLUSION

Encouraging FHEIs to operate in the Philippines definitely presents huge challenges due to the major restrictions in its constitutional, legislative and regulatory frameworks. However, the IHE Report confirms that the creation of a favourable environment for FHEIs will open other opportunities for the Philippines, particularly in the areas of research and teaching. International best practice and

opportunity for internationalisation at home will also pave the way for improvement in quality of teaching and ultimately, globally competitive graduates.

The “roadmap” for international education is being forged by dynamic and aggressive industries from the private sector. Businesses are setting the standards and defining the terms for international education in the country.

On the surface, strong HEI and industry partnerships are promising and may provide positive impact on employment and revenue. However, without a national policy that will outweigh short-term objectives with long-term goals, higher education development and growth cannot be assured of economic sustainability or meaningful impact on social and cultural development.

CONCLUSION

Transnational education requires considerable costs and investments. Many countries like Singapore and UAE have made large investments into the TNE sector.

However, in the case of the Philippines, the bulk of public resources bound for the education sector happens to be devoted to the basics – classrooms, textbooks and teachers. Although there are private HEIs in the country that have the capacity and resources to engage in TNE activities, they are not actively pursuing it owing to such factors as institutional hesitance, risk perception, and general uncertainty over what legal framework or rules of law ought to apply. Hence, this study hoped to provide both an empirical basis and a legal framework for

incentivising TNE activities in the higher education sector. Philippines, but in other parts of the world, particularly APEC member countries.

The implementation of the K to 12 program is seen as a step in the right direction. It is a clear message that Philippine political actors are aware of the needs and demands of the global education market as well as the alignment between education and employment. The K to 12 program can be understood as a legitimising factor among foreign and international institutions in considering applicants who wish to enter post-secondary education and training. Having passed through K to 12 means that the student, in vying for

higher education, is holding “credentials” bestowed upon him or her by a “compliant” pre-tertiary education system. This study takes this accreditation/legitimation track several steps further by suggesting a national strategy for incentivising transnational education by leveraging upon the factor of accreditation, among other legitimating devices. Once Philippine nationals who wish to engage in the business of transnational education are perceived to hold the necessary badges of legitimacy and social standing dictated by global community standards and trends, then it ought to follow that any perception of risk in doing business with Philippine institutions should diminish.

CONCLUSION

While a number of jurisdictions contend to be *the* premiere educational hub in Asia, with the Philippines forming no exception, it remains to be seen whether the Philippines is capable of identifying its niche in the international academia. The IHE Report likewise raised this matter, but contended that ASEAN integration may bring huge opportunity for the Philippines. Three advantages were cited: i) English language, ii) the value placed on education, and iii) its ability to synthesise. This, provided that the Philippines can address barriers in its legislative and regulatory framework.

The IHE Report noted that the excellent command of the English language in Philippine schools creates

the perfect environment to attract international students to the country beyond their immediate need to learn English. As English is the official language of instruction in Philippine HEIs, this potentially grants access to all higher education courses taught in the country. And since it is widely spoken across the country, it provides exposure to an English language environment beyond the university campus. Another advantage is in the quality of its higher education system, which ranks 29th in the Global Competitiveness Index. Moreover, the recently published Human Capital Index²³ positions the Philippines 46th in the world among 124 countries. It scores particularly high for

human capital among those in the 15-24-year-old age group and ranks 20th in the world, ahead of Singapore (22nd), Malaysia (30th) and Vietnam (29th).

Further, the report highlighted that by becoming an education hub, the Philippines can attract a flow of talented faculty and students through its universities, with potential benefits to its R&D base. This in turn can spur economic growth for the country. Another benefit is the improvement of its talent retention, addressing some of the issue associated with the large-scale diaspora overseas of skilled workers, many of whom are college graduates with high English proficiency.

23 World Economic Forum (2015), The Human Capital Report 2015; <http://reports.weforum.org/human-capital-report-2015/>

CONCLUSION

Certainly there can be objections to any policy focus on transnational education. One recurring objection is that TNE will contribute to the “brain drain” phenomenon as well as stifle local competition. The proponents of this Study are of the view that the “brain drain” argument and any resort to protectionism are overrated and unconstructive for policy development over an increasingly internationalised, if not inevitable, activity. A paradigm shift is needed to escape policy avoidance over important and recurring social questions. Secondly, there are a number of strategies and policy levers that can be tapped to avoid the very pitfalls that skeptics of TNE fear. This Study

suggests viable strategies, both existing and proposed, for the benefit of stakeholders of transnational education. If strategic posturing and meaningful public choice continue to be relevant for perceptively successful forays into the transnational education sector by the likes of Singapore, Malaysia, and China, then there seems to be no reason why the Philippines should stay out of reach.

Finally, the call for a strong concerted effort among the education agencies, the public and private HEIs, and FHEIs is being put forward to clear the path for the development of the IHE roadmap and strategy. Better opportunities for IHE in the Philippines await with the creation of an

enabling environment for both domestic and overseas HEIs. This will also pave the way for the Philippines to grow as a regional education hub in ASEAN.