

Executive Summary

Direct Investigation into Education Bureau's Regulation of Institutions Offering Non-local Higher and Professional Education Courses

Introduction

In Hong Kong, any person intending to offer a course leading to the award of any higher or professional qualification by a non-local institution (“non-local course” (“NLC”)) has to apply for registration, or exemption from registration, with the Non-local Courses Registry (“the Registry”) of the Education Bureau (“EDB”). The Registry processes such applications in accordance with the Non-local Higher and Professional Education (Regulation) Ordinance (“the Ordinance”).

Our Findings

2. This direct investigation aims to examine EDB’s mechanism for regulating NLCs with a view to identifying any inadequacy. Our investigation covers how EDB monitors operation of NLCs to prevent fraudulent activities.

Legislation on and Mechanism for Regulation of NLCs

3. According to EDB, the main purpose of the Ordinance is to regulate, through a registration system, the operations of non-local institutions in order to prevent substandard NLCs from being provided in Hong Kong and thereby protect the interests of students enrolled in those courses.

4. To ensure the standards of NLCs, the Ordinance provides that any NLC offered in Hong Kong by an institution must be at a level comparable to that of the course leading to the same academic/professional qualification awarded by the institution in its home country.

5. Pursuant to the Ordinance, the Registry shall process applications for registration of NLCs and require the operators of registered courses to submit annual returns to show that the courses continue to meet the requirements set out in the Ordinance. Moreover, the Registry periodically carries out random checks on NLC advertisements and websites and takes follow-up actions on cases that may involve violations. Upon receipt of complaints against an operator for violations, the Registry will take follow-up actions in accordance with the Ordinance and its established procedures.

6. EDB has advised us that the circumstances of violation may vary from case to case. Before deciding whether a case should be referred to law enforcement authorities such as the Hong Kong Police Force and the Customs and Excise Department, the Registry considers the nature and seriousness of violation and whether the institution concerned has taken any action to rectify the situation.

7. Under the Ordinance, the Registry can suggest cancelling the registration of a registered course and eventually cancel the registration if any violation is found.

Systemic Problems Revealed in the Lifelong College Incident

8. In November 2015, there were media reports alleging that Lifelong College might have forged documents, back dating the registration of some students to enable premature award of academic qualifications to those students. The systemic problem thus revealed warrants attention.

9. EDB has indicated that falsification in any material particular by operators through forging or doctoring documents/information involves serious criminal offences under other legislation. However, such offences are beyond EDB's regulatory regime under the Ordinance. Therefore, the Registry has no specific procedures for monitoring this aspect.

10. Section 33 of the Ordinance, however, provides that any person who in purported compliance with the provisions of the Ordinance or a requirement under the Ordinance makes any statement or representation of facts which he knows to be false in a material particular commits an offence. And yet, EDB is unable to give a definite answer as to whether the registration of an NLC would or could be cancelled by the Registry on grounds of non-compliance with this provision of the Ordinance.

Our Comments

Students' Interests Generally Protected

11. We find that EDB's current regulatory mechanism for NLCs has generally achieved the objective of the Ordinance in protecting the interests of students enrolled in such courses. We believe that the mechanism is capable of ensuring that:

- (1) NLCs offered in Hong Kong meet the equivalent standards of those courses recognised in their home countries;
- (2) prospective students of NLC are well aware before enrolment that it would eventually be up to employers to decide whether the qualifications are recognised, and that the Government would not provide any guarantee; and

- (3) appropriate assistance is available to students if they encounter problems or unreasonable treatment.

Inadequacies of the Regulatory Mechanism

12. However, if an operator conspires with some students such that those students can be awarded academic/professional qualifications with omission of part of the course requirements and set criteria, that would bring about all sorts of negative impacts on our society, including unfairness to the following parties: students who have faithfully pursued the course and satisfied all the requirements, employers who have hired the bogus graduates in the mistaken belief that they have attained the course standards, and clients served by the bogus graduates at work.

13. From the perspective of preventing fraudulent activities by course operators, EDB's current regulatory mechanism is seriously inadequate.

Lack of Self-initiated Surprise Inspections

14. Prevention is better than cure. But EDB does not conduct any regular inspections of operators' premises, nor has it devised any monitoring procedures specifically for detecting falsification in any material particular by operators through forging or doctoring documents. By the time it intervenes after suspected violations are revealed, it might be too late for the Registry to gather the necessary evidence.

No Requirement for Operators of Registered Courses to Keep Relevant Documents

15. During our investigation, EDB has imposed an additional condition of registration on those NLCs applying for registration, under which the operators are required to maintain documentary records relating to their students as well as the courses taken for the duration of their study and up to two years after completion or discontinuation of their courses, so as to facilitate the Registry's regulatory and enforcement actions in future. However, the above additional condition is not imposed on courses already registered. We consider that since the Ordinance has already conferred such power on the Registry, EDB should have brought all registered courses into the coverage of this enhanced regulatory measure.

Lack of Specific Legal Provisions and Enforcement Guidelines

16. According to EDB, even though an operator is found to have engaged in fraudulent activities, neither the Ordinance nor the Education Ordinance currently contains any provisions that EDB can confidently invoke to cancel the registration of the NLC or the school registration of the operator concerned. This is clearly a deficiency in the system.

Recommendations

17. In the light of the above analysis and comments, The Ombudsman recommends that EDB:

- (1) devise a mechanism for periodically conducting surprise inspections of the operators' premises and random checks on documentary records relating to the courses taken by students, in order to prevent more effectively falsification in any material particular by operators through forging or doctoring documents;
- (2) deliberate further with the Department of Justice on the feasibility of imposing an additional condition on courses already registered, under which the operators will be required to maintain documentary records relating to the courses taken by students for the duration of their study and up to two years after completion or discontinuation of their courses; and
- (3) consider amending the Ordinance and the Education Ordinance; pending legislative amendments, EDB should at least devise clear enforcement guidelines as soon as possible, including setting out for staff's information under what circumstances the Bureau can invoke the relevant laws to cancel the registration of fraudulent NLCs and the school registration of the operators concerned.

Office of The Ombudsman
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