

**The regulation of non-local tertiary courses
in Hong Kong**

Terry Evans & Karen Tregenza

Faculty of Education

Deakin University

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INTRODUCTION

This paper reports on some research from an ARC funded project being conducted by the authors into the ways in which Australian universities establish collaborations with partners in Hong Kong and Papua New Guinea to offer courses in those countries. One feature of such collaborations in Hong Kong is the way in which, since 1997, the local Special Administrative Region (SAR) government regulates the provision of 'non-local courses' by means of an Ordinance. The paper describes and analyses the impact of the Ordinance on both local and overseas stakeholders. This impact represents a particular enactment of the regulation of globalisation (and localisation) in education. The paper reports on the issues that have emerged which are leading to current moves to modify the Ordinance's provisions.

THE RESEARCH PROJECT

The research project that informs this paper is currently in its third and final year. It is particularly concerned to understand how successful partnerships are established and what the issues and consequences are for those involved. It consists of nine case-studies of post-secondary distance education courses offered through collaboration between Australian institutions with partners in Hong Kong (a Special Administrative Region of China with a strong British legacy in its higher education systems) or Papua New Guinea (PNG as it is often known, a developing nation with a strong Australian legacy in its higher education system). These two nations represent the 'aid' and 'trade' imperatives in educational collaboration. For PNG, educational partnerships with Australia are about nation-building and are often supported by Australian aid funds and/or draw upon Australian institutions' commitments to aiding developing nations. While in the case of Hong Kong, where education is a highly valued commodity, the concern is to participate more as part of Australia's export trading, and to provide courses that are internationally competitive in their price and quality. It is on this Hong Kong context and subsequent regulation of non-local courses that this paper focuses.

Most of the case-studies concern partnerships to provide multiple courses that form part of an articulated sequence, typically from Bachelors through to Masters levels. A range of discipline areas is covered, although they all have a professional connection; it is virtually impossible to find off-shore courses without such a connection. Each institution involved is studied using typical case-study methods including analysis of public and private documents, interviews with key people, observations of meetings, classes and other events, and analyses of internal policy, publicity and teaching materials. The research is conducted on the basis that no participating institutions or persons will be identified in any research publication without their prior written permission. Such permission has not been sought, hence, neither the names of participants nor their institutions are revealed in this paper.

Hong Kong

Brief history

Prior to the arrival of the British, Hong Kong was a small fishing community and a haven for travellers and pirates in the South China Sea. During the Opium Wars with China in the Nineteenth Century, Britain used the territory as a naval base. Following the end of the first Opium War, the 'Treaty of Nanking' in 1842 ceded Hong Kong to Britain in perpetuity. Following additional conflicts with the Chinese in 1860, Britain gained Kowloon and Stonecutters Island. In 1898 Britain acquired the New Territories on a 99-year lease.

Throughout the late thirties, Japan advanced into China and in 1941, the British army surrendered Hong Kong to the Japanese. Britain re-occupied the territory in 1945 following Japan's surrender.

In 1984, after several years of negotiation, Britain and the People's Republic of China agreed that Hong Kong (comprising Hong Kong Island, Kowloon and the New Territories) would become a Special Administrative Region of China from July 1, 1997, when Britain's lease of the New Territories expired. Declaring a policy of 'One Country, Two Systems', China agreed to give Hong Kong considerable autonomy over administrative policy, allowing its existing social and economic systems to remain unchanged for fifty years. In the period from 1997 to date, Hong Kong SAR has continued as a vibrant capitalist entity, although it has been affected by the 'Asian economic meltdown' of the late 1990s experiencing, for example, stock and property market falls and business collapses and unemployment.

Hong Kong as an educational market place

Higher education in Hong Kong has a strong British legacy and remains very much a British style to its structures and processes. There are currently eleven tertiary institutions in Hong Kong with enrolments in 1999 totalling 56,491 full-time students and 19,056 part-time students in sub-degree, undergraduate and postgraduate courses. In keeping with many Asian societies, education is a highly prized 'commodity' in Hong Kong. This is reinforced by continuing Hong Kong SAR government declarations that education is a 'top priority'. Consequently, the Hong Kong Education Department is aiming for a 60 percent participation rate in higher education (currently 30 percent). It is anticipated that this increase may be achieved, in part, by widening access to students through the provision of courses provided in Hong Kong by overseas universities and colleges. It is expected there will be greater demand for higher education places, an increase in non-local full-time courses in Hong Kong, and more demand for overseas (offshore) study. Hence, a vibrant market is emerging for what are called 'non-local' (that is, overseas) providers, especially those with existing off-campus (distance education) courses and infrastructure that they can readily deploy in Hong Kong.

Hong Kong's history as a 'free-enterprise', low tax colony has helped to create the social, political and economic conditions immediately preceding and following the 'hand-over' in 1997. These conditions, which are built on centuries of Chinese culture, position Hong Kong as a society which values its global business 'enterprise culture' and which wishes to see itself as one of the global nodes of economic power and influence. Education and knowledge are valued in Hong Kong, not only because they are seen as essential to the so called 'knowledge economy' of globalisation, but also because they resonate with traditional Chinese values of learning and wisdom. A pervasive element of these matters is the position of English in the community, business and education. Whilst Cantonese is the dominant language of Hong Kong, English is widely (if not strongly) used. English remains the official language of government and is the medium of instruction in most university courses. English has the position historically because of Hong Kong's colonial past, but it has its current position because of English being perceived as the global language, and certainly the language of international business (and tourism) which Hong Kong values so highly.

Regulating Globalisation in hong kong

In previous work (Evans, 1997; Evans & Nation, 2002) it has been asserted that it is difficult for educators, especially in higher education, to escape the rhetorical imperatives of globalisation. Generally these bear on both the pedagogical and curricular levels. Pedagogically, educators are encouraged to develop their practices 'online' so that they can teach (potentially) globally. At the curricular level, it is argued their curricula need to be 'internationalised'; that is, educators can no longer just teach 'local' curricula, but rather 'global' matters must be covered in order that the learners become knowledgeable global citizens. Much of the rhetoric is underpinned by the arguments and values of economic rationalism, whereby the worth of individuals, products and services is determined by their economic value (as 'trained' producers and 'informed' consumers) in the 'global' marketplace. There are many assumptions and tensions in the rhetorical imperatives that are worthy of scrutiny, however, in the case of Hong Kong, it can be said that the practice of 'globalisation' in its educational contexts, especially in higher education, is more advanced than in most other nations.

It can be conjectured that there is a variety of historical and practical reasons that place Hong Kong in a more advanced position in terms of globalisation than most other nations. Its existence as a British colony not only provided many features (the intrusion of English which has become what is described as the 'global' language (Crystal, 1997), links to an overseas network of Commonwealth markets, jurisdictions etc). Its physical geography and demography also necessitated its interaction with other nations to obtain everything from basic services (such as water) through to the prerequisites for, and niceties of, a rapidly developing economy and society. In effect, interdependent international arrangements and trading, if these can be seen as precursors to globalisation, were well established in Hong Kong. The impact of (mainland) Chinese people, language(s) cultures and values was also of inestimable importance. By the time globalisation emerged both conceptually and practically, Hong Kong was amongst the first to embrace the new ways information and communication technologies could 'globalise' its activities.

An important element of the way in which Hong Kong positions itself as a globalising entity is through education, especially through higher education. As noted above, English remains the language of government and of the higher education sector. Although there has been considerable 'localisation' of senior government positions, especially since 1997, the universities remain populated predominantly by academic staff who are either local people, often with one or more overseas degrees (usually from Anglophone nations) or expatriates (also usually from Anglophone nations). Although, the medium of instruction at the universities is English, observation of classes shows that with local staff Cantonese is often

used, typically alongside English and/or in a hybrid Cantonese/English form. (See Evans and Nation, 2001 for a discussion of hybridisation between local languages and English in 'offshore' distance education). The curricula are also strongly influenced by British and, more recently, other national higher education curricula (again, predominantly Anglophone). However, as in language, there are significant local knowledge, values and contextual material in Hong Kong curricula. This may be seen as a feature of what Giddens (1994) describes as the 'intensified reflexivity' of globalisation creating the need for 'a world of clever people'. He argues that,

... individuals more or less have to engage with the wider world if they are to survive in it. Information produced by specialists (including scientific knowledge) can no longer be wholly confined to specific groups, but becomes routinely interpreted and acted on by lay individuals in the course of everyday actions (1994, p. 7).

Arguably, Hong Kong is striving to be part of the 'world of clever people' and in order to do this it has sustained its higher education system as an important locale of 'intensified reflexivity' where ideas and knowledge are taught, (created) and communicated in ways that enable people to become 'clever people' who can interact globally. However, in order to do so Hong Kong requires a greater higher education capacity than it currently possesses. It has been decided that the use/purchase of education from overseas is a good way to both expand the capacity and also enhance the global interactivity of its people and institutions. Therefore, the provision of courses in Hong Kong by nations such as Australia (which is the second largest provider after the UK) is valued and strategically accommodated.

Hong Kong's experience showed that there were some risks in allowing overseas institutions to provide courses in Hong Kong. By the late 1990s there were mounting numbers of complaints about such provision, especially when local agents were involved in establishing the importation of courses and in advertising, marketing and the delivery of educational services. The Government moved to regulate the provision of courses; a step that can be seen both as an instance of the reflexivity of globalisation and of the regulation of its processes.

THE NON-LOCAL HIGHER AND PROFESSIONAL EDUCATION (REGULATION) ORDINANCE

Overview of the Ordinance

In response to the problems mentioned above, and the rapid expansion in the number of overseas higher education programs being offered in Hong Kong, and the variation in the quality of standards, the *Non-local Higher and Professional Education (Regulation) Ordinance* came into operation in June 1997 to regulate the provision of non-local courses. The objective of the legislation is to protect the interests of local students by guarding against the marketing of substandard non-local courses conducted in Hong Kong. Also, to enhance Hong Kong's reputation as a community which values reliable and internationally recognised academic professional standards. The objective is achieved through a system of registration as well as control over advertisements, refund and use of premises. The legislation provides a framework to regulate the quality, operation and marketing of courses of higher education conducted in Hong Kong by non-local institutions or professional bodies (Hong Kong Council for Academic Accreditation, 1997).

Under the legislation, **all** courses conducted in Hong Kong leading to the award of non-local higher academic or professional qualifications are required to apply for registration. The registrar of Non-local Higher and Professional Education Courses, who is Director of

Education, will approve the registration of a course if it meets the criteria detailed in the Ordinance. The major criteria include:-

(a) In the case of a course leading to the award of non-local higher academic qualification, the course must be offered by a recognised institution and is itself recognised by its home country as being of a comparable standard to a similar course operated by the institution in the home country;

(b) As for a course leading to the award of non-local professional qualification, it must be recognised by the relevant professional body in the home country.

(Non-local Higher and Professional Education (Regulation) Ordinance, 1996, Section 10, p. A666).

If a regulated course is conducted by a non-local institution in collaboration with a local institution, it may be exempted from registration. If, after consultation with the Hong Kong Council for Academic Accreditation (HKCAA), the Executive Head of the local institution certifies that the course meets the standards required for registration both in terms of the standing of the institution or professional body and the quality assurance and recognition status of the course, that course will be exempted from registration. Purely distance learning courses are also excluded from the registration requirement. In 2001, there are 327 registered courses and 318 exempted courses in Hong Kong (Hong Kong Education Department, 2001) with the United Kingdom representing 54 percent, Australia 31 percent and the United States of America 7 percent of the registered courses. The cost of registering a course is \$33,000HKD, with an additional \$18,000HKD per annum maintenance fee also incurred. The successful registration or exemption of a regulated course is an assurance that the standard of the course, and the award it leads to, is comparable with that offered in the home country.

To further protect local students, major restrictions are imposed on advertisements relating to regulated courses. Under the Ordinance, advertisements to induce enrolment in a regulated course, which is not an exempted or registered course, are restricted. It is an offence to place an advertisement which contains any false or misleading information in relation to the nature, purpose or quality of the course or award to which the course is claimed to lead. Registered courses are required to have their registration numbers stated clearly in any advertisements, likewise, exempted courses, must display their exemption status. In the event a course ceases operation prematurely, is cancelled or loses its exemption or registration status, the legislation requires the operator to refund the relevant part of the course.

To ensure courses are conducted in safe premises, operators of registered and exempted courses are required to provide the particulars of the premises and seek prior approval for their use from the Registrar. However, where the premises are exempted, prior approval is not necessary. Exempted premises include local schools, specified local tertiary institutions, premises designed and constructed for educational uses; and hotel function rooms. Failure to meet any of these operational requirements (advertisement, refund and premises) may lead to substantial fines and possible imprisonment. An operator may appeal to the Non-local Higher and Professional Education Appeal Board against decisions by the Registrar.

Impact of the Ordinance

During the initial period of our research, interviews with Australian and Hong Kong people involved in the provisions of Australian courses in Hong Kong yielded some common views on the Ordinance. People connected with Hong Kong universities welcomed the Ordinance as a means of regulating the provision of courses in Hong Kong. They saw it as providing a means by which some important standards of course content and provision were maintained. They usually saw that the 'cowboys' (typically these were said to be some Hong Kong private agents and providers and some UK institutions) were driven out and that generally respectable courses and provision prevailed. They were (unsurprisingly) comfortable with the fact that their Australian partners did not need to be registered under the Ordinance and could apply for an exemption. They saw the overseas provision as either helping to meet the excess demand in Hong Kong (especially in business and IT areas), providing specialist courses (especially postgraduate professional development courses) that they did not offer (and which they may take over in the future), and injecting valued overseas ideas, knowledge and expertise in Hong Kong. The reservations that the Hong Kong university interviewees had about the Ordinance included that its processes (through HKCAA) were slow and bureaucratic, it was not effective in monitoring provision or requiring compliance, it was rather crudely focused on matters of quality, and its requirement that the courses offered had to be identical to those offered in the originating country prohibited tailoring for Hong Kong circumstances.

The private providers in Hong Kong broadly had the same views about the Ordinance as their university counterparts, except that they added some more negative views. In addition, they generally disliked the two-tier system through which the universities were able to gain exemptions, but the non-university providers had to obtain (and pay for annually) registration for each course. They were even more critical of the HKCAA's slow and bureaucratic processes.

The Australian university interviewees reflected the views of their Hong Kong counterparts. There was a positive view of the idea of the Ordinance and similar views on the negative aspects. Given the costs involved in establishing new courses overseas, the annual registration fee was seen as tough, especially as it was for each course (even if the courses were linked and articulated with each other, such as Graduate Certificates and Masters drawing on common or overlapping units). The prohibition on tailoring courses for Hong Kong was seen as educationally a weakness by many partners, although they recognised that it was an effective, if crude, means of preventing some unscrupulous practices resulting in inferior courses and qualifications being offered in Hong Kong.

An overall concern from the Hong Kong Government was that non-local courses offered in compliance with the Ordinance were being interpreted by people in Hong Kong as in some way as accredited by the Government, not only as worthy courses, but as acceptable qualifications for recognition in Hong Kong for professional practice and promotion. As a result some disgruntled or confused Hong Kong people had been making representations to Government Departments (such as Education and Manpower) or the HKCAA when it became clear that their courses did not necessarily gain them the positions they had expected.

Modification of the Ordinance provisions

As a result of our research, it was clear that by late 1999, the experiences of both local and international stakeholders in Hong Kong higher education, suggested possible changes in the Ordinance operation were required. It was suggested (by Evans) that a forum be convened to bring the interested parties together to discuss their experiences and to make

suggestions for the future. This suggestion was put successfully to various key players in Hong Kong and *The future of the regulation & provision of non-local courses in Hong Kong Forum* was held May 14, 2001. The Centre for Research in Distance and Adult Learning (CRIDAL) and Li Ka Shin Institute of Professional and Continuing Education (LiPace) at the Open University of Hong Kong formally offered the Forum in collaboration with the Deakin-Gordon Research Institute for Professional and Vocational Education and Training (RIPVET, with which Evans is associated), IDP Australia, and the British Council. The 79 participants included representatives from the Education and Manpower Bureau, HKCAA, the local universities, employers and private providers, and a number of people from overseas universities and colleges. Two panels of students and graduates of overseas (Australian and British) courses were invited to contribute.

The one-day Forum presented an opportunity to examine critically activities surrounding the Ordinance with a view to the future of non-local courses in Hong Kong. The morning consisted of presentations covering the global education market, the contemporary scene, quality assurance and British and Australian perspectives on the regulation of non-local courses in Hong Kong. Much of the afternoon was dedicated to work where participants broke into groups, each with the task of identifying and discussing aspects of the Ordinance in most need of change, and how these changes could be implemented. Many issues emerged from the Forum discussions that are leading to current moves to modify the Ordinance's provisions. A selective sample of the issues and outcomes follows.

Transparency and interpretation difficulties

The issue of transparency and interpretation of the Ordinance emerged as a significant theme in need of modification. First, it was raised in terms of the current situation where individuals are interpreting the Ordinance regulations differently. Clearly there is a need for consistency in understanding, systems, evaluation and monitoring. At present, the most common queries from prospective course providers have been those seeking clarification and information. To address this problem, it was suggested that practice notes detailing practical situations be developed so that all stakeholders have a better understanding of the Ordinance and consensus around the regulations and their meaning. Practice notes to explain what is silent in the Ordinance would be a valuable reform in light of the difficulties some institutions are currently experiencing.

There is a clear dissatisfaction and frustration with delayed and lengthy procedures that hinder registration. Some courses have apparently taken up to one and a half years to become registered by the HKCAA. It was suggested that a considerable amount of correspondence goes back and forth between the HKCAA and the applicant institutions requesting clarification, information and additional documents to support the application. This often results in protracted periods of delay for registration. As a means of alleviating the amount of missing information and documentation from applicants, it was recommended that the application form be evaluated and modified accordingly. It was suggested that seminars focussing on the Ordinance could be held for both the local and non-local institutions, where stakeholders could be advised on the specific requirements for developing an application to register a course, and also learn the most common mistakes and how to avoid them.

Quality assurance

A suggestion to eliminate the current exempted courses arrangement claiming that it presented a double standard in the operation highlighting differences between exempted and registered courses and providers was raised. Presently, there is a two-tier system for the exemption of some courses because some institutions, such as the universities, are mature institutions with well-established accreditation and course-approval procedures. Their established 'brand names' are at stake if they facilitate less than satisfactory courses from overseas. It is expected that these more mature institutions have a well-developed internal quality assurance mechanism which is recognised and trusted between established institutions and in the community. At the first tier, a less established institution may have only one or two courses, however as they mature they will develop better internal quality assurance measures and progress to the second tier where some exemption is given.

Comparability as a benchmark vs restriction on localisation

Meeting one of the main criteria of the Ordinance, that the course must be comparable to that offered in the home country, was raised as a major issue. This was particularly in relation to the generally well-accepted educational goal of providing courses which are relevant to the contexts and needs of learners, in this case Hong Kong people. The HKCAA is concerned that the quality of the course is comparable and is not necessarily focussed on the adaptation of content (for example, localised case-studies) to reflect the local context. Participants explained that the comparability criteria restrict the relevance and localisation of the course and ignored the need to reflect the students' (and other clients') preferred outcomes. It was suggested that perhaps the quality and provisions of an overseas institution could be regarded as a benchmark, rather than the similarity of its proposed Hong Kong course to its own local course. This would also remove the duplication of approval requirements for degrees from the same non-local institution. It was also suggested that the international Quality Assurance councils and agencies could be called on to assist in the assessment of an institution. Perhaps there is merit in the suggestion of looking at the institution in conjunction with the course as a benchmark as some courses vary in quality between faculties within institutions.

Self-funding of the HKCAA

It was suggested that, because the HKCAA is a self-funding body, it has a vested interest in providing and charging for more services than were actually required in order to regulate the provision of non-local courses in Hong Kong. It was suggested that other funding mechanisms and/or sources be considered which encouraged efficiencies and high quality service provision to those seeking registration and exemption.

Clearly, the establishment of effective collaborative and consultative processes are at the heart of facilitating any change to the Ordinance and the regulatory process. By working with international and local offices and other bodies to incorporate a wide range of views and opinions, a more comprehensive and adaptable Ordinance can emerge. It was acknowledged that wide spread consultation can be a cumbersome process and suggested providers form alliances with a contact point to report and feedback to government how the Ordinance could be improved or better operationalised. Efforts are currently being made to facilitate this process and to ensure that it is as client focused as possible.

Concluding comment

The Forum represented an important landmark in the consideration of the purposes, implementation and outcomes of the Ordinance in Hong Kong. Although there were some tensions extant, the overall effect was one of consensus on the purposes of the Ordinance, that is, to regulate, but not constrain, the provision of non-local courses in Hong Kong. Indeed, a government representative made it clear that it welcomed the provision of non-local courses, not just because of the direct benefits, but also because of the indirect benefits of competition with the local courses. The implementation and outcomes of the Ordinance were also broadly agreed. Indeed, the Government seemed to take the view that the HKCAA needed to be more responsive and effective in its implementation of the Ordinance, as did most of the other key players. There was lingering resentment of the universities by the private providers, but this seemed to be a tension that was unlikely to be resolved. Increasing the effectiveness of the monitoring and quality assurance processes was broadly accepted in principle, but how this is to occur was not resolved. From the viewpoint of globalisation, it was interesting to note that the Government saw that the establishment of higher education quality assurance agencies in overseas nations (especially the major non-local provider nations of Australian and the UK) was significant. It was suggested that the Government might well look to these agencies or to their reviews of individual universities to be a future element in the registration provisions. This may represent further evidence of notions of quality and quality assurance in higher education becoming another feature of the globalisation of education.

Hong Kong is a fascinating site within which to conduct research on the matters of the internationalisation and globalisation of education. The particular aspect reported on here represents one part of some research in progress. There are other aspects to be pursued subsequently as the research concludes and these deal with the various layers of activity involved in establishing courses in Hong Kong and Papua New Guinea. These are proving to be complex social processes that intersect with the political, economic and historical conditions of those sites.

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