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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. R. 1134

7 December 2007

FURTHER EDUCATION AND TRAINING COLLEGES ACT, 2006 (ACT NO. 16 OF 2006)

REGULATIONS FOR THE REGISTRATION OF PRIVATE FURTHER EDUCATION AND TRAINING COLLEGES, 2007

I, Grace Naledi Mandisa Pandor, Minister of Education, after consultation with the Council of Education Ministers and in terms of section 51, read with section 30, of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), hereby publish the regulations in the Schedule.



Grace Naledi Mandisa Pandor, MP

Minister of Education

Date: 7 December 2007

SCHEDULE

CHAPTER 1

1. DEFINITIONS

In these regulations, any word to which a meaning has been assigned in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), has the same meaning and, unless the context indicates otherwise –

“applicant” means a private education institution that applies for registration as a private college in terms regulation 3, or a private college that applies for the amendment of its registration or provisional registration in terms of regulation 4;

“accreditation” means accreditation as defined in section 1 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);

“amendment” means an alteration, as contemplated in sections 35 and 38 of the Act, in the conditions of registration or provisional registration of a private college;

“application for amendment” means an application made in terms of section 35 of the Act;

“condition” means a stipulation or directive, as contemplated in section 37 of the Act, that the registrar may impose on a private college;

“conversion of provisional registration” means a change of provisional registration of a private college to full registration in terms of section 31(6);

“director” means the director of a company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973);

“expiry date” means a date on which provisional registration contemplated in section 31(3) of the Act expires;

“foreign applicant” means an applicant who is a foreign juristic person as defined in section 1 of the Act;

“NQF” means the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“private college” means a college as defined in section 1 of the Act;

“programme” means the sequential learning activities associated with curriculum implementation and leading to the achievement of a qualification registered at levels 2 to 4 of the NQF;

“qualification” means a qualification as defined in section 1 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);

“registration” means the legal authority or licence granted by the registrar of private colleges to a private institution to offer qualifications that are registered at levels 2, 3 or 4 of the NQF in terms of the Act;

“requirements” means the prescribed criteria contemplated in Chapter 3 of these regulations or any other criteria prescribed in the Act that an applicant or private college must fulfil in order to be registered or maintain its registration;

“site” means any learning centre, including a campus or learning centre controlled and administered by an applicant or private college;

“the Act” means the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); and

“Umalusi” means the Council defined in section 1 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).

CHAPTER 2

APPLICATION PROCESS

2. Eligibility

Subject to these regulations, a person proposing to provide further education and training as contemplated in the Act is eligible to apply for registration if he or she is –

- (a) registered as a company in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (b) recognised as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973).

3. Application for registration

- (1) A juristic person contemplated in Regulation 2 who intends to establish and maintain a private college must apply to the registrar in terms of these regulations.
- (2) Subregulation (1) also applies to a newly established juristic person resulting from a merger between two or more private colleges.
- (3) An applicant must –
 - a) submit the application in full, in the form determined by the registrar by notice in the *Government Gazette*; and

- b) submit, with the application, the full fee determined by the registrar by notice in the *Government Gazette*.
- (4) The registrar must acknowledge receipt of the application.
- (5) The registrar may require an applicant to clarify items in the application or submit additional information before the application is determined.
- (6) If an applicant does not comply with subregulation (3)(a) and (b), the registrar must decline to process the application.
- (7) An applicant must, within 14 days of receiving acknowledgement of receipt of the application by the registrar, notify the registrar if there is any change in the information submitted in the application.
- (8) An applicant may commence operation only after being granted provisional or full registration by the registrar.
- (9) The fee contemplated in regulation 3(b) may be subject to annual review.

4. Application for amendment

- (1) Subregulations 3(3) to 3(6) also apply to the submission of an application for amendment.
- (2) An applicant may implement the proposed amendment only after it has been approved by the registrar.

5. Withdrawal of application

- (1) An application made in terms of regulation 3 or 4 may be withdrawn by written notice to the registrar.
- (2) On receipt of such a notice of withdrawal, the registrar must, within a reasonable time, return the application documents, and may retain the fee submitted in terms of regulation 3(3)(b).

6. Subsequent application for registration

- (1) An applicant whose –
 - (a) application has been denied;
 - (b) provisional registration has lapsed;
 - (c) registration has been cancelled; or
 - (d) appeal has been unsuccessful,

may submit a subsequent application after a period of 12 months.

- (2) Despite subregulation (1), an applicant who is found guilty of an offence in terms of section 48 of the Act may submit a subsequent application 60 months later, after having paid the fine or served the term of imprisonment.

CHAPTER 3

REQUIREMENTS FOR REGISTRATION

7. Compliance with the Act

In order to be registered, an applicant must comply with the requirements of the Act, as contemplated in section 30, and with the provisions of these regulations.

8. Name of applicant

An applicant must apply for registration in the same name under which the applicant is registered or recognised in terms of the Companies Act, 1973 (Act No. 61 of 1973), which will be a trade name for the applicant.

9. Quality assurance, prohibition of discrimination and occupational health and safety

- (1) An applicant must submit a declaration that it will comply with the quality assurance requirements of Umalusi.
- (2) After evaluating the application for accreditation lodged by an applicant, Umalusi must issue a report to the registrar on the accreditation status of the applicant.
- (3) The accreditation report contemplated in regulation 9(2) must contain, but need not be limited to, the following:
 - (a) legal name of the applicant;
 - (b) accreditation status of the applicant;
 - (c) duration of the accreditation cycle;
 - (d) names of qualifications for which the applicant is accredited;
 - (e) physical address of each site of delivery, including the name of the province in which the site is located;
 - (f) conditions of accreditation, if applicable; and
 - (g) responsibilities delegated to the applicant, if applicable.
- (4) As contemplated in section 29(3)(a) of the Constitution of the Republic of South Africa, 1996, an applicant or private college may not discriminate on the basis of race.
- (5) An applicant must submit proof that it complies with all the regulations relating to the health and safety of persons on its premises.

10. Finance

- (1) An applicant must submit proof that –
 - (a) the income of the applicant is sufficient to sustain the offering of its programmes in an acceptable manner; and
 - (b) the applicant has a stable financial position that will enable it to maintain operational continuity.
- (2)
 - (a) An applicant must submit proof that it has established financial surety or guarantee to ensure that it meets its obligations to its enrolled students.
 - (b) If an applicant is provisionally registered, such an applicant must submit, by a date determined by the registrar, proof of establishment of a financial surety or guarantee.
- (3) An applicant must establish the financial surety or guarantee contemplated in subregulation (2)(a) with a financial services provider accredited in terms of the relevant legislation to render such services or with its holding company, provided that such a holding company is listed in the stock exchange under the Securities Services Act, 2004.
- (4) The registrar may, on reasonable grounds, exempt an applicant from the requirement contemplated in subregulation (2)(a).

11. Foreign applicants

A foreign applicant must, in the application for registration, submit proof that its parent institution operates lawfully as an education institution and is accredited by the appropriate body in its country of origin.

CHAPTER 4**DETERMINATION****12. Determination of an application**

- (1) The registrar must consider and determine an application for registration –
 - (a) in accordance with section 31 of the Act; and
 - (b) at least six months before the applicant's proposed date of commencement of operation.
- (2) In determining the application of a foreign applicant, the registrar must verify the information contemplated in regulation 11.
- (3) In determining an application, the registrar must consider –

- (a) all information provided by the applicant;
 - (b) the advice of Umalusi on the applicant's application for accreditation;
 - (c) whether the applicant complies with all the requirements for registration in terms of the Act and these regulations;
 - (d) the differentiation between a foreign juristic person and a local juristic person in terms of section 31(1)(b) of the Act;
 - (e) the proposed programmes and qualifications, and the sites where they are to be offered;
 - (f) section 37 of the Act concerning conditions that may be attached to registration or provisional registration;
 - (g) the rights of the general public, the students and the applicant; and
 - (h) the interests of further education and training as a whole.
- (4) In the light of subregulations (1) to (3), the registrar must determine whether to –
- (a) register the applicant under section 31(2) of the Act;
 - (b) register the applicant provisionally under section 31(3) of the Act and state the terms of provisional registration;
 - (c) impose conditions in terms of section 37 of the Act; or
 - (d) deny the application.
- (5) The registrar must, after considering the advice contemplated in subregulation (3)(b), stipulate the approved qualifications and sites in respect of which registration or provisional registration is granted.
- (6) If an applicant is found to have knowingly submitted fraudulent, false or misleading information, the registrar must deny the application and refer the matter to the South African Police Service for investigation.
- (7) The registrar must notify the head of the relevant provincial education department of the registration or provisional registration of a private college in that province.

13. Application for amendment

- (1) The registrar must consider and determine an application for amendment in accordance with section 36 of the Act at least three months before the amendment comes into effect.
- (2) The registrar must determine whether to –
 - (a) amend the registration or provisional registration;
 - (b) impose a condition in terms of section 37 of the Act; or
 - (c) deny the application for amendment.
- (3) The registrar must, in writing, notify the applicant and give reasons for the decision made in terms of subregulation (2)(c).

14. Cancellation of registration

- (1) Subject to sections 39 and 40 of the Act, the registrar may cancel the registration or provisional registration of a private college if –
 - (a) the private college ceases to –
 - (i) be eligible in terms of regulation 2;
 - (ii) fulfil the requirements for registration contemplated in the Act and these regulations; or
 - (iii) comply with conditions imposed by the registrar in terms of section 37 or 38 of the Act;
 - (b) the private college ceases to provide further education and training as contemplated in the Act;
 - (c) the private college provides fraudulent, false or misleading information –
 - (i) to the registrar; or
 - (ii) to the public in any of its public documents or advertising and marketing material;
 - (d) the private college is liquidated;
 - (e) a director is convicted of an offence in terms of section 48 of the Act;
 - (f) the private college is found guilty of any criminal offence; or
 - (g) the private college fails to discharge any of the responsibilities of a private college contemplated in chapter 6 of these Regulations.
- (2) If Umalusi withdraws accreditation of one or more programmes of a private college, the registrar must, in terms of section 39(2) of the Act, review the registration or provisional registration of the private college.
- (3) If the registrar decides to cancel the registration or provisional registration of a private college, the registrar must –
 - (a) comply with section 40 of the Act;
 - (b) if the final determination is to cancel a registration or provisional registration, issue a written notice to the private college that its registration or provisional registration is cancelled;
 - (c) taking into account the interests of the students at the private college, specify the date on which the cancellation will take effect; and
 - (d) notify the head of the relevant provincial education department of the decision.

15. Notification of registration matters

- (1) The registrar must notify the head of the relevant provincial education department of all determinations made in terms of this chapter in

respect of a private college that has its head office or a site in that province.

- (2) The private college must take reasonable steps to ensure that a notice dealing with the lapse or cancellation of its registration is brought to the attention of students enrolled at the private college without delay.
- (3) The registrar must keep a national register of private colleges on the website of the Department of Education.
- (4) The register contemplated in subregulation (3) should contain the following information:
 - (a) The name, and any approved translation of the name, and any approved abbreviation, acronym or trade name, of the private college;
 - (b) the approved qualifications offered by the private college;
 - (c) the approved sites at which the approved qualifications are offered;
 - (d) the date by which all the requirements for registration must be met, if the private college is provisionally registered in terms of section 31(3) of the Act; and
 - (e) the registration number of the private college.

CHAPTER 5

REGISTRATION CERTIFICATE

16. Registration

- (1) If the registrar grants registration or provisional registration, the private college must be registered under its legal name.
- (2) The registrar may include in the registration certificate the translation, abbreviation, acronym or trade name that uniquely identifies the private college.
- (3) The registrar must not register a private college –
 - (a) under a name that the registrar considers to be fraudulent, false or misleading;
 - (b) under the same name as another private college; or
 - (c) with the same translation, abbreviation, acronym or trade name as another private college,

but must agree with the applicant on an acceptable alternative.

17. Certificate of registration

- (1) The certificate of registration or provisional registration must include –

- (a) the legal name of the private college and any approved translation, abbreviation, acronym or trade name;
 - (b) the unique registration number of the private college;
 - (c) the approved qualifications;
 - (d) the signature of the registrar, and the date of signature; and
 - (e) the coat of arms of the Republic of South Africa.
- (2) If the registration of a private college is amended in terms of section 36 of the Act or if a new condition is imposed in terms of section 38 of the Act, the registrar must issue an amended certificate of registration or provisional registration to the private college and must inform the head of the relevant provincial education department accordingly.
- (3) The private college must return the previous certificate of registration or provisional registration to the registrar within 14 days of receipt of the amended certificate of registration.

CHAPTER 6

RESPONSIBILITY OF A PRIVATE COLLEGE

18. Maintenance of registration

In order to maintain its registration, a private college must –

- (a) continue to fulfil the requirements of the Act;
- (b) discharge the responsibilities of a private college in terms of these regulations and the Act;
- (c) comply with any condition imposed by the registrar in terms of section 37 or 38 of the Act;
- (d) notify the registrar of any change, including, but not limited to, a change in the name or in any of the sites;
- (e) comply with any reasonable process arranged by the registrar after consultations with the private college for the purpose of monitoring compliance with the requirements of the Act and conditions of registration; and
- (f) report immediately to the registrar about the following:
 - (i) reduction or loss of any physical resources necessary for the proper conduct of a programme;
 - (ii) reduction or loss of any supporting service of a programme;
 - (iii) any significant reduction in the financial or personnel resources needed to sustain a programme; or
 - (iv) failure to meet a commitment made to the registrar in the process of registration or as a result of monitoring or review.

19. Display of registration status

Subject to sections 32(1) and 48(4) of the Act, a private college must display –

- (a) its registration certificate or a certified copy thereof in a prominent place accessible to the public and to all students at each of its sites; and
- (b) on all its official documents and on its letterhead:
 - (i) its registration number; or
 - (ii) its registration number and the expiry date of the registration, if the private college is provisionally registered.

20. Programmes and qualifications offered

- (1) A private college must offer only the programmes and qualifications for which it is registered.
- (2) A private college must ensure that any programme for which it is registered is continued long enough to enable a cohort of students to complete the full programme.
- (3) If unavoidable circumstances prevent the continuation contemplated in subsection (2) –
 - (a) the registrar must be informed without delay;
 - (b) the private college must make adequate arrangements to enable affected students to complete the programme with a comparable public or private college; and
 - (c) affected students who have a lawful claim must be reimbursed in accordance with regulation 26(3).
- (4) A private college must comply with the criteria for accreditation of its programmes as determined by Umalusi.
- (5) If Umalusi withdraws accreditation for any of the approved programmes of the private college, the registrar must review the terms of its registration in terms of section 39(2) of the Act.
- (6) A private college must submit an application for amendment to the registrar in terms of regulation 4 if it intends to amend the conditions of its registration or provisional registration.

21. Information for students and the public

- (1) A private college must, at least once a year, for the information of students and the public, publish a calendar or brochure containing –
 - (a) the legal name of the private college;

- (b) contact details of the head office and of each site of the private college;
 - (c) the mission statement of the private college;
 - (d) the legal status of the private college;
 - (e) the names of the directors, chief executive and senior management;
 - (f) the names and qualifications of the academic staff;
 - (g) the admission requirements and procedure;
 - (h) the language policy of the private college;
 - (i) the mode of instruction to be followed at the private college;
 - (j) details of each approved site in each province;
 - (k) the accreditation status of the private college in respect of each qualification that it offers;
 - (l) the rules relating to assessment;
 - (m) details about fees and charges and about a refund policy in case of cancellation or withdrawal;
 - (n) details about student financial aid;
 - (o) details about student support services;
 - (p) the learning contract;
 - (q) the rules or code of conduct; and
 - (r) details about procedures to be followed in the case of complaints and grievances.
- (2) The registrar may, on reasonable grounds, exempt an applicant or private college from publishing the brochure or calendar contemplated in subregulation (1).

22. Academic records

- (1) A private college must keep comprehensive academic records of each student enrolled for each qualification for which it is registered.
- (2) A private college must, at the request of an enrolled student or past student and on payment of a prescribed fee, provide a transcript of the student's academic record which shows –
 - (a) the full name of the student;
 - (b) the identity number of the student or, if the student is not a South African citizen, the passport number and nationality;
 - (c) the student number;
 - (d) the course taken, by code number and name, for each year, in chronological order;
 - (e) the mark or grade attained for each course; and
 - (f) the qualification awarded.
- (3) In the case where an enrolled student or a past student has lost his or her certificate and submits a request for a copy and pays the prescribed fee, a private college must make arrangements through Umalusi to provide the student with a copy of his or her certificate.

- (4) A private college must submit such information from its academic records as the South African Qualifications Authority may require for the National Learner Records Database.

23. Official documents, marketing and advertising material

- (1) With respect to all its official documents and advertising and marketing material, a private college must –
 - (a) ensure that all information about its qualifications and accreditation status is accurate; and
 - (b) make no false, fraudulent or misleading statements.
- (2) A private college may not display the coat of arms of the Republic of South Africa on –
 - (a) its letterhead;
 - (b) official documents; or
 - (c) marketing and advertising materials.

24. Complaints

- (1) Student complaints and grievances shall be lodged and processed in accordance with the complaint and grievance procedure of the private college as contemplated in regulation 21(1)(r).
- (2) If a student has a complaint against the private college at which he or she is enrolled, the student must lodge the complaint with the management of the private college.
- (3) The private college must provide the registrar with the following documents in respect of each complaint:
 - (a) a copy of the letter of complaint;
 - (b) details of how the complaint was resolved; and
 - (c) details of further actions, if any, by the student or institution if the complaint is not resolved to the satisfaction of either of the two parties.
- (4) The documents contemplated in subregulation 3(a), (b) and (c) must be provided in respect of complaints relating to, but not limited to, the following:
 - (a) Quality of teaching and learning;
 - (b) refusal to write examinations;
 - (c) certification;
 - (d) closure of the private college without informing students;
 - (e) unfair business practices;
 - (f) refunds; and
 - (g) fees.

- (5) If a private college fails to resolve a complaint lodged by a student, the registrar may, depending on the nature of the complaint and at his or her own discretion, on receipt of such complaint, refer the private college to Umalusi or to the consumer protector for investigation.
- (6) If the dispute cannot be resolved through Umalusi or the consumer protector, the student has the right to take the matter to court for adjudication.
- (7) Any offence, as contemplated in section 48 of the Act, must be reported at the nearest office of the South African Police Service.

25. Information required by the registrar

- (1) A private college must, in a form determined by the registrar in the *Government Gazette*, for purposes of monitoring and maintaining the further education and training management information system, submit information including, but not limited to –
 - (a) annual audited financial statements as contemplated in section 34 of the Act, by not later than 30 April of each year;
 - (b) the report of an auditor as contemplated in section 34 of the Act, by not later than 30 April of each year; and
 - (c) any other information that may be required in respect of monitoring and evaluation.
- (2) A private college that is provisionally registered must, on a date determined by the registrar, submit, together with its annual report, proof of compliance with the requirements for registration in respect of which it was granted provisional registration.

26. Lapse or cancellation of registration

A private college that has been notified by the registrar that its provisional registration has lapsed in terms of section 31(6)(b) of the Act or that its registration or provisional registration has been cancelled in terms of regulation 14 must –

- (1) within 14 days from the date of the notice of the registrar, inform its students that its registration has lapsed or has been cancelled and notify the students of the arrangements that will be made to safeguard their interests in terms of this regulation;
- (2) issue to each enrolled student a copy of his or her academic transcript;
- (3) reimburse or compensate any enrolled student who has a lawful claim against the private college as a consequence of its ceasing to operate or make adequate arrangements for affected students to complete their programmes at a comparable public or private college; and
- (4) cease to operate on a date determined by the registrar,

and any private college that fails to comply is guilty of an offence in terms of section 48 of the Act.

CHAPTER 7

APPEALS

27. Procedure

- (1) Subject to section 41 of the Act, an interested person who appeals against a decision of the registrar must lodge the appeal, in writing, with the Minister, within 60 days of the registrar's decision.
- (2) An appeal document must specify –
 - (a) the decision being appealed against;
 - (b) the grounds for the appeal; and
 - (c) the remedy being sought.
- (3) The Minister may, on good cause shown, extend the period within which an appeal may be noted against the decision of the registrar.

CHAPTER 8

GENERAL AND TRANSITIONAL ARRANGEMENTS

28. Conflict of interest

The registrar or any employee contemplated in section 27 of the Act may not –

- (a) have a financial interest in any private college or applicant; or
- (b) be on the governing body of any private college or applicant.

29. Transitional arrangements

- (1) A private college that has been registered in terms of the Regulations for the Registration of Private Further Education and Training Institutions (*Government Gazette* No. 25642 of 31 October 2003) shall be deemed to have been registered in terms of these regulations.
- (2) These regulations also apply to pending applications for registration.

30. Revocation of Regulations

The Regulations for the Registration of Private Further Education and Training Institutions (*Government Gazette* No. 25642 of 31 October 2003) are hereby revoked in their entirety.

31. Short Title and commencement

These regulations may be cited as the Regulations for the Registration of Private Further Education and Training Colleges, and come into operation on the date of publication in the *Government Gazette*.