

**DEPARTMENT OF EDUCATION
DEPARTEMENT VAN ONDERWYS**

No. R. 1564

13 December 2002

**HIGHER EDUCATION ACT, 1997 :
REGULATIONS FOR THE REGISTRATION OF
PRIVATE HIGHER EDUCATION INSTITUTIONS**

The Minister of Education, after consultation with the Council on Higher Education, has in terms of section 53(1)(c) read with section 69 of the Higher Education Act, 1997 (No 101 of 1997) made the Regulations, as set out in the Schedule.

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CHAPTER 1

DEFINITIONS

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Higher Education Act, 1997 (Act No. 101 of 1997) has the same meaning and, unless the context otherwise indicates—

'accreditation' means accreditation or preliminary accreditation as determined by the HEQC;

'amendment' means an alteration in the conditions of registration or provisional registration of an institution in terms of section 61 of the Act;

'application for amendment' means an application made in terms of section 58 of the Act;

'application for conversion' means an application to convert provisional registration as contemplated in regulation 5;

'condition' means a stipulation or directive imposed by the registrar on an institution in terms of section 60 of the Act;

'conversion of provisional registration' means the action contemplated in section 54(6)(a) of the Act whereby a provisionally registered institution is registered;

'director' means the director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973);

'expiry date' means the date on which the provisional registration contemplated in section 54(4)(a) and (5) of the Act expires;

'foreign applicant' means an applicant who is a foreign juristic person as defined in the Act;

'HEQC' means the Higher Education Quality Committee of the Council on Higher Education;

'institution' means a private higher education institution that is registered or provisionally registered in terms of the Act;

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

'parent institution' means a foreign higher education institution to which a foreign applicant is legally, commercially or academically subordinate or on which it is otherwise dependent;

'programme' means the sequential learning activities, associated with curriculum implementation, leading to the achievement of a qualification registered at levels 5 to 8 on the NQF;

'qualification' means a qualification registered at levels 5 to 8 on the NQF in terms of regulation 8 of the SAQA National Standards Bodies Regulations, 1998 (Regulation Gazette 452 of 28 March 1998);

'registered programme' means a programme approved by the registrar in terms of regulation 16(4) and (5) and included in a registration certificate in terms of regulation 22(1);

'registration' means the granting of an application to operate as a private higher education institution in terms of the Act, offering such programmes leading to registered qualifications on such sites as the registrar may approve in terms of these regulations;

'requirements' means the prescribed criteria contemplated in chapter 3 of these regulations or any other criteria prescribed in the Act that an applicant or institution must fulfil in order to be registered or maintain registration;

'site' means any learning site such as a campus, satellite campus or learning centre controlled and administered by an applicant or an institution;

'the Act' means the Higher Education Act, 1997 (Act No. 101 of 1997) and any regulations or policy determined in terms of or under the Act.

CHAPTER 2 APPLICATION PROCESS

2. Eligibility

(1) A person proposing to provide higher education as contemplated in the Act is eligible to apply for registration if-

(a) registered as a juristic person 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).

(2) A person who purports to operate an institution is guilty of an offence in terms of section 66 of the Act, and is not eligible to apply for registration except in terms of regulation 7(4).

3. Application for registration

(1) Anyone that intends to establish and maintain a private higher education institution must apply to the registrar in terms of these regulations.

(2) Sub-regulation (1) also applies to a juristic person established through a merger between institutions, with a resultant loss of the juristic personality of the old institutions and the creation of a new juristic person.

(3) An applicant for registration must-

(a) submit the application in full at least eighteen months before the institution is to start operating in the form determined by the registrar in the *Government Gazette*; and

(b) send with the application the full fee determined by the registrar by notice in the *Government Gazette*.

(4) If an applicant does not comply with sub-regulation (3)(a) and (b) the registrar must decline to process 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) An applicant must promptly notify the registrar if there is any change in the information submitted in the application.

4. Application for amendment

(1) Regulation 3(3) to 3(5) applies to the submission of an amendment application, except that it must be submitted at least twelve months before the proposed amendment is intended to come into effect.

(2) The registrar may for good reason permit a later submission if requested in writing by the applicant.

5. Application for conversion

Regulation 3(3) to 3(5) applies to the submission of a conversion application, except that it must be submitted by the date determined by the registrar in terms of regulation 16(4)(b)(ii).

6. Withdrawal of application

(1) An application made in terms of regulations 3, 4 or 5 may be withdrawn by notice in writing to the registrar, but no notice of withdrawal is valid if it is submitted after the registrar has notified the applicant in writing of the result of the application.

(2) On receipt of a valid notice of withdrawal the registrar must forthwith return the application documents to the applicant.

7. Subsequent application for registration

(1) An applicant that has withdrawn an application in terms of regulation 6(1) may submit a subsequent application to the registrar not less than 12 months after the date of withdrawal.

(2) An applicant whose-

(a) application has been denied other than in terms of regulation 16(6); or

(b) provisional registration has lapsed; or

(c) registration has been cancelled

may submit a subsequent application not less than 36 months after the date of denial, lapsing or cancellation respectively.

(3) A person whose application has been denied in terms of regulation 16(6) may submit a subsequent application not less than 60 months after the notification of such denial of registration has been issued by the registrar.

(4) Despite (2) a person who has been found guilty of an offence in terms of section 66 of the Act may submit a subsequent application not less than 60 months after paying the fine or serving the term of imprisonment as the case may be.

(5) Regulation 3 applies to the submission of a subsequent application.

CHAPTER 3

REQUIREMENTS FOR REGISTRATION

8. Compliance with the Act

In order to be registered an applicant must fulfil the requirements of the Act.

9. Name of applicant

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

10. Prohibition of discrimination

An application must include a signed declaration by the applicant that the institution, if registered, will not discriminate on the basis of race and that it will comply with the provisions of section 9(4) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

11. Programmes and qualifications

An applicant must propose to offer only programmes leading to qualifications that are registered on the NQF.

12. Quality assurance

(1) In the application contemplated in regulations 3, 4 and 5, an applicant must submit a signed declaration that -

(a) it has applied to the HEQC for accreditation, listing the programmes for which it has applied for accreditation or preliminary accreditation;

(b) if registered, it will comply with the requirements of the HEQC as contemplated in section 53(1)(b)(ii) or 53(1)(c) of the Act.

(2) In the application contemplated in regulations 3, 4 and 5, an applicant must provide evidence that it complies with all regulations relating to the health and safety of persons on the premises.

(3) In the application contemplated in regulations 3, 4 and 5, an applicant must provide a written declaration that it -

(a) will maintain the necessary academic and support staff with appropriate academic or professional qualifications and experience to achieve the objectives of each programme;

(b) will maintain a quality management system including assessment policies and procedures appropriate to each programme;

(c) will maintain sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;

(d) will not exceed the enrolment that the facilities and equipment can reasonably accommodate;

(e) will maintain full records of each student's admission, academic progress and assessment of learning in respect of each programme.

13. Finance

(1) In the application contemplated in regulations 3, 4 and 5, an applicant must submit proof that-

(a) its income is or will be sufficient to sustain its programmes in an acceptable manner; and

(b) it has or will have a stable financial position that will enable it to maintain operational continuity.

(2) In the application contemplated in regulations, an applicant must submit proof that it has established financial surety or guarantees to ensure that the institution meets its obligations to its enrolled students.

14. Foreign applicants

In the application contemplated in regulation 3, 4 and 5, a foreign applicant must submit proof that-

(a) its parent institution operates lawfully as a higher education institution and is accredited by the appropriate accrediting body in its country of origin;

(b) a qualification awarded in its name will be fully recognised by its parent institution and by the appropriate state authorities in its country of origin; and

(c) a student who is awarded its qualification will suffer no disadvantage if he or she applies to enrol for an appropriate advanced qualification in the parent institution.

15. Monitoring and evaluation

In the application contemplated in regulations 3, 4 and 5, an applicant must submit a signed declaration that if registered or provisionally registered the institution will comply with-

- (a) a periodic evaluation of the institution by the registrar at intervals to be determined by the registrar;
- (b) any other reasonable process arranged by the registrar after consultation with the institution for the purpose of monitoring compliance with the requirements of the Act and the conditions of registration as imposed by the registrar in terms of section 60 of the Act.

CHAPTER 4 REGISTRATION

16. Determination of an application

- (1) The registrar must consider and determine an application for registration-
 - (a) in accordance with section 54 of the Act and these regulations;
 - (b) at least six months before the applicant intends to commence operations.
- (2) In determining the application of a foreign applicant, the registrar must independently verify the information contemplated in regulation 14(a).
- (3) In determining an application, the registrar must consider-
 - (a) all the information and declarations provided by the applicant and any other relevant information;
 - (b) the advice of the HEQC on the applicant's application for accreditation;
 - (c) whether, if registered, the applicant in all its higher education programmes will maintain acceptable standards that are not inferior to standards at a comparable public higher education institution;
 - (d) whether, if registered, the applicant in all its higher education programmes will comply with the requirements of the HEQC in terms of section 53(1)(b)(ii) of the Act;

(e) whether the applicant has met all other relevant requirements of the Act;

(f) a determination by the Minister relating to the scope and range of operations of institutions in terms of section 3(3) of the Act;

(g) the distinction between a foreign juristic person and a local juristic person in terms of section 54(1)(b) of the Act;

(h) the proposed programmes and qualifications and the respective sites where they are to be offered;

(i) section 54(3) and (4) of the Act concerning provisional registration;

(j) section 60 of the Act concerning conditions attached to registration or provisional registration;

(k) regulation 21 concerning the registration name;

(l) the rights of the general public, the students and the applicant; and

(m) the interests of the higher education system as a whole.

(n) any other requirement prescribed by the Minister in terms of section 53(1)(c) of the Act.

(4) In the light of sub-regulation (3) the registrar must determine whether to-

(a) register the applicant in terms of section 54(1)(c) and 54(2)(a) of the Act ;

(b) grant provisional registration in terms of section 54(3) and (4) of the Act, stating-

(i) the terms of provisional registration;

(ii) the date by which the registrar must receive an application for the conversion of provisional registration;

(c) impose conditions in terms of section 60 of the Act; or

(d) deny the application in terms of section 54(2)(b) of the Act.

(5) In determining to grant registration or provisional registration as contemplated in sub-regulation (4) the registrar must approve the programmes to be offered by the institution and the respective sites where they are to be offered.

(6) Despite sub-regulation (4), 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.

17. Conversion of provisional registration

(1) The registrar must consider and determine an application for the conversion of provisional registration submitted in terms of regulation 5 in accordance with section 54(6) of the Act and regulation 16(3).

(2) The registrar must determine whether to-

(a) register the applicant in terms of section 54(6)(a) of the Act with effect from the expiry date;

(b) impose a condition in terms of section 60 of the Act, and if so state in writing what condition and the reasons why it has been imposed; or

(c) deny the application for conversion and, if denied, the provisional registration lapses in terms of section 54(6)(b) of the Act.

(3) If the registrar does not receive an application submitted in terms of regulation 5, or if registration is denied in terms of sub-regulation (2)(c), the registrar must notify the institution in writing that its provisional registration will lapse at the end of the academic year, giving reasons.

18. Amendment of registration

(1) The registrar must consider and determine an application for amendment in accordance with section 59 of the Act and regulation 16(3) at least three months before the amendment is to come into effect.

(2) The registrar must determine whether to-

(a) amend the registration or provisional registration; or

(b) impose a condition in terms of section 60 of the Act; or

(c) deny the application for amendment.

(3) In the case of sub-regulation (2)(b) or (c), the registrar must notify the institution in writing, giving reasons.

19. Cancellation of registration

(1) Subject to sections 62 and 63 of the Act, the registrar must cancel the registration or provisional registration of an institution if-

(a) the institution ceases to-

- (i) provide higher education as contemplated in the Act;
- (ii) meet the criteria of eligibility contemplated in regulation 2;
- (iii) fulfil the requirements for registration contemplated in the Act and chapter 3 of these regulations;
- (iv) comply with any condition imposed by the registrar in terms of section 60 or 61 of the Act; or
- (v) operate or terminates all its programmes.

(b) the institution provides fraudulent, false or misleading information-

- (i) to the registrar; or
- (ii) in any of its public documents or advertising and marketing material;

(c) the institution is liquidated; or

(d) the owner or director(s) is convicted of an offence in terms of section 66 of the Act.

(2) If the HEQC withdraws accreditation from one or more of an institution's programmes, the registrar must review the institution's registration or provisional registration in terms of section 62(2) of the Act and determine whether reasonable grounds exist for cancellation.

(3) If the registrar proposes to cancel an institution's registration or provisional registration, the registrar must-

(a) comply with section 63 of the Act;

(b) publish the intention to cancel by notice, with reasons;

(c) consider any representation from the institution or an interested person in relation to such action;

(d) publish the final determination, with reasons.

(4) If the final determination is to cancel a registration or provisional registration, the Registrar must issue a notice in writing to the institution that its registration or provisional registration is cancelled and that the cancellation takes effect at the end of the academic year.

20. Publication of registration notices

(1) The registrar must publish every decision made in terms of this chapter by notice in the Government Gazette.

(2) The registrar must keep a public record of registered or provisionally registered institutions, together with copies of the registration certificates.

(3) The institution must take reasonable steps to ensure that a notice dealing with the lapsing or cancellation of registration is brought to the attention of students enrolled at the institution.

CHAPTER 5 REGISTRATION CERTIFICATE

21. Registration name

(1) Subject to this regulation, if the registrar grants registration or provisional registration, the institution must be registered under its legal name, but the registrar may include in the registration certificate such translations, abbreviations, acronyms or trade names that uniquely identify the institution.

(2) Despite (1), the registrar must not register an institution-

(a) under a name that the registrar considers to be fraudulent, false or misleading; or

(b) under the same name as another institution, or include in two certificates of registration the same translation, abbreviation, acronym or trade name.

(3) In the case of sub-regulation (2)(a) or (b), the registrar must agree on an acceptable alternative with the applicant.

22. Certificate of registration

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

- (a) the registered name of the institution and, where applicable, any approved translation, abbreviation, acronym or trade name;
- (b) the institution's registration number as a private higher education institution;
- (c) registered programmes;
- (d) the respective sites at which registered programmes are to be offered;
- (e) the date by which all the requirements for registration must be met, if the institution is provisionally registered in terms of section 54(3) and (4) of the Act;
- (f) any condition imposed in terms of section 60 of the Act; and
- (g) the registrar's name, signature and date of signature.

(2) If an institution's registration is amended in terms of sections 58 or 59, or a new condition is imposed or a condition amended in terms of section 61 of the Act, the registrar must issue an amended certificate of registration to the institution.

(3) On receipt of the amended certificate of registration, the institution must within 14 days return the previous certificate of registration to the registrar.

(4) A certificate of registration is not transferable from one institution to another.

CHAPTER 6 RESPONSIBILITY OF AN INSTITUTION

23. Maintenance of registration

In order to maintain its registration an institution must-

- (a) continue to fulfil the requirements for registration contemplated in the Act and chapter 3 of these regulations;

(b) discharge the responsibilities of a registered institution in terms of this chapter;

(c) comply with any condition imposed by the registrar in terms of section 60 or 61 of the Act;

(d) with respect to all its higher education programmes comply with the requirements of the HEQC in terms of section 53(1)(b)(ii) of the Act;

(e) notify the registrar of any change in the information submitted in terms of the Act and these regulations;

(f) undergo an evaluation by the registrar at intervals to be determined by the registrar. The registrar will determine the date of commencement of the first cycle by a notice in the *Government Gazette*;

(g) comply with any other reasonable process arranged by the registrar after consultation with the institution for the purpose of monitoring compliance with the requirements of the Act and the conditions of registration.

(h) ensure that it:

(i) maintains the necessary academic and support staff with appropriate academic or professional qualifications and experience to achieve the objectives of each programme;

(ii) maintains a quality management system including assessment policies and procedures appropriate to each programme;

(iii) maintains sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;

(iv) does not exceed the enrolment that the facilities and equipment can reasonably accommodate;

(v) maintains full records of each student's admission, academic progress and assessment of learning in respect of each programme

(i) report immediately to the registrar :

(i) loss of any physical facility necessary for the proper conduct of a programme;

- (ii) loss of any supporting service to a programme;
- (iii) change in the site of delivery of a programme;
- (iv) any significant reduction in the financial or personnel resources needed to sustain a programme; or
- (v) the intent to acquire another entity or institution.

24. Display of registration status

Subject to section 55(1) of the Act, an institution must display-

- (a) its registration certificate or a certified copy in a prominent place accessible to the public and to all students on each of its sites;
- (b) the following statement in full on its letterhead and official documents -
 - (i) if the institution is registered, "Registered with the Department of Education as a private higher education institution under the Higher Education Act, 1997. Registration certificate no. [state number on certificate]"; or
 - (ii) if the institution is provisionally registered, "Provisionally registered with the Department of Education until [expiry date] as a private higher education institution under the Higher Education Act, 1997. Provisional registration certificate no. [state number on certificate]."

25. Registered programmes

- (1) An institution must offer only such programmes on only such sites as are approved by the registrar and included in the registration certificate.
- (2) An institution must ensure that any registered programme is continued long enough to enable any cohort of students to complete the full programme, but if unavoidable circumstances prevent this-
 - (a) the registrar must be informed without delay;
 - (b) the institution must make reasonable arrangements to enable the affected students to complete the programme at a comparable public or private institution; and

(c) despite (b), the institution must ensure that its students are appropriately reimbursed or compensated by utilising the financial surety or guarantee referred to in regulation 13(2).

(3) An institution must submit an application for amendment to the registrar in terms of regulation 4 if it intends to withdraw, indefinitely suspend or add a programme or site.

26. Information for students and the public

An institution must publish at least once each year a calendar, prospectus or brochure for the information of students and the public containing-

- (a) registered name of the institution;
- (b) contact details for head office and each site;
- (c) the statement contemplated in regulation 24(b);
- (d) mission statement;
- (e) legal status;
- (f) name(s) of director(s), chief executive and senior management;
- (g) names and qualifications of full-time and part-time academic staff employed by the institution;
- (h) admission requirements and procedures including recognition of prior learning;
- (i) language policy;
- (j) mode of instruction;
- (k) details of each registered programme by site;
- (l) accreditation status of each registered programme;
- (m) rules relating to assessment, academic credit accumulation, progression and qualification;
- (n) fees and charges including refund(s) in the case of cancellation or withdrawal;
- (o) student financial aid;

(p) student support services;

(q) rules or code of conduct.

27. Academic records

(1) An institution must keep a comprehensive record of the academic achievement of each student enrolled in a registered programme.

(2) An institution must make available to an enrolled student or past student on request a transcript of his or her academic record which shows-

(a) full name;

(b) identity number or passport number and nationality if not a South African citizen;

(c) student number;

(d) courses taken by code number and name for each year in chronological order;

(e) mark or grade for each course, with an explanatory note on the marking or grading system;

(f) qualification awarded.

(3) An institution must make available to an enrolled student or past student on request a copy of a certificate awarded to the student.

(4) An institution must submit to SAQA such information from its academic records as SAQA requires for the National Learners' Records Database.

28. Official documents, marketing and advertising

(1) With respect to all its official documents, advertising and marketing material, an institution must-

(a) comply with regulation 24(b);

(b) ensure that all information about its approved programmes and accreditation status is accurate; and

(c) make no false, fraudulent or misleading statements.

(2) An institution may not display on its letterhead, official documents, marketing or advertising material-

- (a) the national coat of arms of the Republic of South Africa;
- (b) the logo of the Department of Education;
- (c) the logo of the HEQC or the CHE.

(3) An institution may advertise any programme of recreational or general public interest in the areas of its academic and professional competence provided that it does not purport to lead to a qualification registered on the NQF.

(4) An institution may not market programmes contemplated in sub-regulation (3) as being accredited or approved by the CHE or registered by the Department of Education.

29. Information required by the registrar

An institution must submit such information as the registrar may reasonably require for the purpose of monitoring compliance with the Act and maintaining the higher education information management system, including but not restricted to-

(1) an annual report to be submitted on or before 30 April of each year and comprising:

- i) audited annual financial statements as contemplated in section 57(1)(b) of the Act to be submitted by a date determined by the registrar in the form specified by the Department of Education;
- ii) an annual auditor's report as contemplated in section 57(2) of the Act to be submitted by a date determined by the registrar in the form specified by the Department of Education;
- iii) a certified copy of any agreement relating to the provision of academic or administrative services or the sharing of staff or facilities between the institution and another institution.
- iv) any other annual reporting information in a form specified by the registrar.

(2) information required in respect of the monitoring and evaluation contemplated in regulation 15; and

(3) any other information in a form specified by the registrar.

30. Lapse or cancellation of registration

An institution that has been notified by the registrar that its provisional registration has lapsed in terms of regulation 17(3) or that its provisional registration or registration has been cancelled in terms of regulation 19 must-

- (a) inform its students within 14 days from the date of the registrar's notice that its registration has lapsed or been cancelled and notify the students of the arrangements that will be made to safeguard their interests in terms of this regulation;
- (b) issue to each enrolled student a copy of his or her academic transcript as contemplated in regulation 27(2);
- (c) reimburse or compensate any enrolled student who has a lawful claim on the institution as a consequence of its ceasing to operate from funds established as contemplated in regulation 13(2);
- (d) make adequate arrangements for affected students to complete their programmes at a comparable public or private institution; and
- (e) cease operating before or at the end of the academic year, and any institution that fails to comply is guilty of an offence in terms of section 66 of the Act.

CHAPTER 7 APPEALS

31. Procedure

(1) Subject to section 64 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 date of the registrar's decision.

(2) An appeal document must specify-

- (a) the decision being appealed;
- (b) the grounds for the appeal;
- (c) the remedy being sought.

(3) The Minister must decide an appeal within 60 days of its being lodged unless there are compelling reasons for delay and the Minister has informed the appellant accordingly.

CHAPTER 8 GENERAL AND TRANSITIONAL ARRANGEMENTS

32. Conflict of interest

The registrar or any employee contemplated in section 50 of the Act must not-

- (a) have a financial interest in any institution or applicant for registration;
- (b) be a member of the governing body of any institution or applicant for registration;
- (c) engage as a consultant to any institution or applicant for registration.

33. Transitional arrangements

(1) Subject to the Act, institutions registered prior to these regulations must comply with the requirements for registration by 31 December 2004.

(2) Subject to the Act, applicants that lodge an application for registration prior these regulations and are registered or provisionally registered after 1 April 2003 and before 31 July 2003 must comply with the requirements for registration by 31 December 2004.

34. Appendices

Appendices 1 to 11 will be published in the Government Gazette on or before 28 February 2003.

35. Short title and commencement

These regulations are the Regulations for the Registration of Private Higher Education Institutions, 2003 and come into effect on 1 April 2003.