

## COMMUNICATION TO LICENSED FURTHER AND HIGHER EDUCATION INSTITUTIONS

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| <i>Title:</i> New Sanctions Procedure by the Quality Assurance Committee within the NCFHE |  |                           |
| <i>From:</i> Sandro Spiteri, Director   | <i>Date:</i> 29 <sup>th</sup> May 2014 | <i>Comm. No.:</i> 12/2014 |

Dear colleagues

The Quality Assurance Committee (QAC) was set up by the NCFHE by virtue of Article 69 (10) of the Education Act. It is chaired by Prof. John Portelli, who has extensive experience in quality assurance issues internationally, and is composed of another four members recommended by the NCFHE and approved by the Hon. Minister for Education. The remit of the QAC is given in Appendix 1 of this Communication, which includes the relevant Articles from LN 296/2014. Briefly:

- The QAC shall carry out the licensing, accreditation and quality assurance functions of the NCFHE;
- decisions taken by the Quality Assurance Committee require adoption by the Commission for their validity and enforcement;
- reference to "the Commission" within LN 296/2012 shall be construed as reference to the Quality Assurance Committee, unless the context shall otherwise require.

Articles 5, and 11-17 of LN 296/2012 outline the sanctioning powers of the QAC. The relevant articles are given as Appendix 2 of this Communication. Briefly, the QAC may:

- a) impose ad hoc conditions in licensees, at any time, for a fixed term or indefinitely
- b) impose restrictions on the licensee
- c) impose an administrative fine of not more than €4,000
- d) refuse to renew a licence
- e) revoke a licence
- f) in the case of any of the above, inform the competent authorities in any foreign states in which the provider or its subsidiaries are carrying on any activity related to the licence held or previously issued under these regulations.

These articles also clearly outline the obligations of the QAC to ensure due process, fair hearing and sufficient safeguards for the licensee to comply with licence conditions and instructions prior to the imposition of any sanction.

The following procedures are being proposed to operationalise the sanctioning function of the QAC. These procedures do not replace but define the relevant provisions in the LN.

### **Procedure for implementation of sanctions function by the QAC.**

1. The Director for Quality Assurance within the NCFHE determines that there is sufficient *prima facie* evidence or indications of suspected non-compliance to LN regulations and/or licence conditions by a licensee for this case to be forwarded to the QAC.
2. The Director informs the CEO NCFHE and the Chair QAC.
3. A Case File is opened for each case presented to the QAC.
4. The QAC may request the licensee in question to attend a meeting of the QAC to clarify issues pertaining to the case, and to discuss and/or inform the licensee of the way forward to be taken.

5. If the QAC determines that a licensee is guilty of non-compliance and this is endorsed by the NCFHE Board (see point 9 below), a Letter Alerting of Non-Compliance to Regulations is sent to the licensee, with specific conditions and timelines for implementation. Generally, the escalation of sanctions that the Committee would recommend to the NCFHE Board is as follows:

| <b>Escalation of Sanctions</b>  | <b>Invoking Art.17<sup>1</sup></b> |
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| a) Restrictions in the operations of particular courses,<br>i. for a set time period of not more than one year from the date of the communication of the QAC<br>ii. for a time period longer than one year from the date of the communication of the QAC, or indefinitely   | No<br>Yes                          |
| b) A review of licence conditions for specific courses or generally with respect to the operations of the licensee:<br>i. for a set time period of not more than one year from the date of the communication of the QAC<br>ii. for a time period longer than one year from the date of the communication of the QAC | No<br>Yes                          |
| c) Restrictions in the operations of the licensee for an indefinite period, which may include review of the licence in terms of the courses or categories thereof that the licensee may be allowed to operate.  | Yes                                |
| d) Imposition of administrative fine up to € 4,000. A fine is imposed either:<br>i. If any of the previous sanctions do not lead to compliance, or<br>ii. In conjunction with any sanction for which Article 17 is invoked if the gravity of the offence so warrants.   | Yes<br>Yes                         |
| e) Suspension of license for a period tied to the fulfilment of specific conditions   | Yes                                |
| f) Refusal to renew license   | Yes                                |
| g) Revocation of license  | Yes                                |

6. None of the above sanctions absolve the QAC from the duty to report suspected criminal action to the authorities if this is warranted.
7. The Director may impose temporary restrictions in terms on point a) i. of the list above (i.e. not invoking Article 17<sup>1</sup>) on operations with respect to specific courses or programmes of a particular licensee if this is reasonably required due to the urgency of the situation.
8. Any escalation of sanctions may only take place after due consideration of the state of affairs by the QAC.
9. QAC decisions with respect to sanctions are forwarded to the NCFHE Board for adoption.
10. The implementation of Article 17 generally takes the form of publication of sanction on the NCFHE website. Furthermore, the QAC may also recommend that specific entities in foreign countries be formally alerted.

Regards

Sandro Spiteri  
Director for Quality Assurance

<sup>1</sup> “Upon the imposition of conditions or restrictions on a licensee, or the revocation of a licence under these regulations and when a licence ceases to have effect in accordance with these regulations, the Commission shall inform the competent authorities in any foreign states in which the provider or its subsidiaries are carrying on any activity related to the licence held or previously issued under these regulations.”

## APPENDIX 1

### Establishment and Remit of the QA Committee

The Board of the NCFHE set up the Quality Assurance Committee (QAC) by virtue of Article 69 (10) of the main Act. The remit of the QAC are outlined in Article 4 of LN 296/2012:

(4) In accordance with article 69(10) of the Act, the Commission shall establish a Quality Assurance Committee to carry out its licensing, accreditation and quality assurance functions under these regulations. Decisions taken by the Quality Assurance Committee require adoption by the Commission for their validity and enforcement:

Provided that reference to "the Commission" under these regulations shall be construed as reference to the Quality Assurance Committee, unless the context shall otherwise require.

(5) The Quality Assurance Committee referred to in the previous sub-regulation shall compile and send to the Commission an annual report, not later than four weeks after the end of each financial year, on its activities during that year, including the policies, functions and future plans of the Quality Assurance Committee. Such report shall be integrated with the annual report to be compiled and sent by the Commission to the Minister in accordance with the article 66 of the Act:

Provided that such annual report may include matters relating to quality assurance and accreditation, including the standards and outcomes of the Maltese further and higher education system, processes and international standing, and the impact of these regulations and any guidelines issued under these regulations on Maltese further and higher education, using information available through quality audits and accreditation, and from other sources.

(6) In undertaking its functions as the competent authority for licensing, accreditation and quality assurance of providers and programmes under these regulations, the Commission shall enter into agreements with sectoral bodies engaged in matters which in any manner relate to the regulation, supervision, monitoring or quality of the provision of further or higher education, with the purpose of setting up a system for such sectoral bodies to assist the Commission in its functions under these regulations.

## APPENDIX 2

### Articles in LN296/2012 related to the sanctioning role of the QA Committee.

**5.** (5) All providers shall comply with the provisions of these regulations and any guidelines made by the Commission under these regulations from time to time.

(6) Any provider that fails to comply with any of the provisions of these regulations or any guidelines established by the Commission in accordance with these regulations shall be liable to an administrative fine not exceeding four thousand euro (€4,000). The Commission shall be responsible for the imposition of such fines and for their enforcement upon any person contravening these regulations and the guidelines referred to in sub-regulation (5), taking into account the gravity of the non-compliance and any payments made to that provider for the undertaking of a further or higher education programme: *Provided that prior to imposing a fine as provided in this regulation, the Commission shall allow for a due period of time for the provider to comply with sub-regulation (5).*

**11.** (1) The Commission may refuse to issue, renew, change or extend a licence in the following circumstances:

- (a) if the applicant provider is found to be in violation of the provisions of these regulations or of any guidelines made and published by the Commission in accordance with these regulations;
- (b) if it is satisfied that any person employed or proposed to be employed by the provider in a headship position is not of good conduct or has been convicted of an offence;
- (c) if it is satisfied that the legal representative of the provider, or, where the provider is a body corporate, any of its members:
  - (i) is not of good conduct;
  - (ii) has been convicted of an offence;
  - (iii) is disqualified from managing corporations under the provisions of any law; or
  - (iv) is subject to any law, regulation, administrative provision, or is in any other manner prevented from acting in the capacity assigned to him;
- (d) the Commission may also refuse to issue, renew, change or extend a licence if it is satisfied that:
  - (i) the provider's registration has ever been cancelled or suspended for any one or more programmes from any other official authority;
  - (ii) the provider is subject to any law, regulation, administrative provision, or is in any other manner prevented from acting as a provider in Malta;
  - (iii) the provider uses or proposes to use its premises in contravention of applicable development and planning regulations or for any purposes which are in any way improper, unethical or unlawful; or
  - (iv) the provider uses or proposes to use premises which provide a hazard to those within.

**12.** (1) Upon issuing a licence, the Commission may impose conditions on the licensee in accordance with the requirements of these regulations or any guidelines made and published by the Commission in accordance with these regulations.

(2) The Commission may make the conditions referred to in sub-regulation (1) applicable for a specific period of time. In such case, it shall specify the length of such period in the licence. In the event of no such specification in the licence, the condition shall be deemed to apply for the whole duration of the licence.

(3) At any time after having issued a licence, the Commission may vary or remove any condition imposed under sub-regulation (1) or impose new conditions on the licensee in accordance with these regulations or any guidelines made and published by the Commission in accordance with these regulations, where these refer to licensees.

**13.** (1) At any time after having issued a licence, the Commission may impose restrictions on the licensee in any of the following cases:

- (a) if any document or information accompanying an application for a licence or any information given in connection therewith is false or if the licensee conceals from, or fails to notify the Commission of, any document or information or change therein which was its duty to reveal or notify under these regulations or in accordance with any guidelines made and published by the Commission in accordance with these regulations;
- (b) if programme accreditation previously granted to a licensee is revoked in accordance with the provisions if the licensee ceases to carry on the activity pursuant to the licence in Malta for more than six months;
- (c) if the licensee fails to comply with the conditions under which the licence has been issued;
- (d) if the licensee is likely to become unable to meet its obligations under the licence; or
- (e) due to any other matter in violation of the provisions of these regulations or any guidelines made and published by the Commission in accordance with these regulations, where these refer to licensees.

(2) The Commission may vary or remove any restriction imposed under this regulation at any time after having issued a licence.

(3) Restrictions imposed by the Commission in accordance with this regulation shall be such as the Commission shall consider appropriate for the proper compliance by the licensee with the requirements of these regulations or any guidelines made and published by the Commission in accordance with these regulations, where these refer to licensees.

**14.** (1) The Commission shall revoke a licence in the following circumstances:

- (a) where the licensee breaches any condition or restriction imposed by the Commission in accordance with the provisions of these regulations: *Provided that where the Commission has imposed on the licensee a condition or restriction in accordance with regulations 12 or 13, it may only revoke a licence on the expiration of the time period provided in regulation 15(1)(a);*
- (b) where the licensee is declared bankrupt or makes a composition with its creditors or otherwise ceases to operate; or
- (c) where the licensee acts in any manner that severely violates the provisions of these regulations or of any guidelines made and published by the Commission in accordance with these regulations, where these refer to the licensees.

(2) Where the Commission intends to revoke a licence in accordance with this regulation, it shall serve written notice on the licensee and shall specify therein the grounds on which it intends to take such action, and a reasonable time period in which the licensee shall be entitled to make representations to the Commission as to why such action should not be taken: *Provided that the Commission may revoke such licence before the expiry of such period, where it considers it reasonably justifiable on an evaluation of the circumstances.*

**15.** (1) Where the Commission intends to impose, vary or remove conditions or restrictions on licensees in accordance with regulations 12 and 13, it shall serve written notice on the licensee of its intention, and shall specify therein the following:

- (a) the type of condition, restriction, variation or removal thereof and the duration of the time period of its applicability: *Provided that where no such time period is specified in the notice, any new condition or restriction shall be deemed to apply for the whole duration of the licence and any variation of the condition or restriction shall be deemed to apply for the duration of the previously imposed condition or restriction, as the case may be;*
- (b) the grounds on which it intends to take such action;
- (c) a reasonable time period in which the provider shall be entitled to make representations to the Commission as to why such action should not be taken; and
- (d) a reasonable time period during which the provider is required to arrange its affairs to meet the imposed condition or restriction or variation thereof.

(2) Where the Commission intends to revoke or suspend a licence in accordance with regulation 14, it shall serve written notice on the licensee of its intention, and shall specify therein the following:

- (a) the grounds on which it intends to take such action;

- (b) a reasonable time period in which the provider shall be entitled to make representations to the Commission as to why such action should not be taken; and
- (c) a reasonable time period during which the provider is required to arrange its affairs in order for the revocation or suspension not to be effected.

**16.** A licence shall cease to have effect where the licensee renounces the licence or where licensee no longer maintains provider accreditation in accordance with these regulations.

**17.** Upon the imposition of conditions or restrictions on a licensee, or the revocation of a licence under these regulations and when a licence ceases to have effect in accordance with these regulations, the Commission shall inform the competent authorities in any foreign states in which the provider or its subsidiaries are carrying on any activity related to the licence held or previously issued under these regulations.