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**To: Dr. Bonginkosi “Blade” Nzimande
Minister of Higher Education and Training**

**DHET NON-REGISTRATION OF CLOSE
CORPORATION PRIVATE TRAINING
PROVIDERS**

Table of Contents

WHO ARE WE?	3
PRELUDE.....	4
THE BACKGROUND.....	4
THE PROBLEM	4
PRIVATE EDUCATION AND TRAINING PROVIDERS ENVIRONMENT.....	5
STATUS OF CLOSE CORPORATION TRAINING PROVIDERS	6
CONVERSION OF CLOSE CORPORATIONS	6
CONSTITUTIONAL CONSIDERATIONS.....	7
DHET OPERATIONS.....	8
POSSIBLE SOLUTIONS.....	8
CONCLUSION.....	8
ANNEXURE C – Notice from CIPC relating to Close Corporation registration.	9

WHO ARE WE?

JC 1 – 2016 are a group of ETD consultants under Nigel Shipston and Lynel Farrell, established as a means of promoting consistent quality processes to the learning environment under Private Training Providers.

Lynel has some 12 years' experience in the training environment, including SETA operations. She has qualified with a *ND: ODETDP (Occupationally Directed Education Training and Development Practices Field Of Study Education, Training and Development)*. Her main focus is assisting Private Training Providers in implementing Quality Assurance in the ETD Environment.

Nigel has 27 years training background with all aspects of Private Provider operations, from facilitation to assessment and moderation and management functions. He has conducted external moderation activities for TETA and, as of 2009, assists around 200 training providers with accreditation, learning material, moderation and evaluation. As with Lynel, his main focus is on the implementation of Quality Assurance in the ETD environment.

The current service of assisting Private Training Providers with DHET Registration was born of the needs of both new and existing customers and as a result of collaboration over the past 7 years. The volume of Private Training Providers needing to register has necessitated a group effort in order to ensure that there is consistency in the processes of Registration and to support Private Training Providers in their efforts to retain quality, compliant services.

Having dealt with hundreds of Private Training Providers over the past 10 years, it is apparent that those with whom we are in contact, whether registered as a Close Corporation or a Private Company, are equally eager to comply with Registration requirements as a means of establishing their credibility and to root out the non-compliant Providers who are damaging the credibility and market of Private Training Providers. There has certainly been no indication whatsoever that being a Close Corporation in any way infers that these providers are inferior to Providers who are Private Companies. On the contrary, experience has shown that the "opportunistic" wrong doers come in either business format, but that compliant Providers, whether Close Corporation or Private Company, are most certainly on a level footing when it comes to service delivery and Quality.

After witnessing the efforts of particularly Close Corporation Private Training Providers, it is a major concern that DHET are rejecting applications from these providers, without any review of the input, professionalism and experience that these training providers bring to industries in general and to Learners. To date there has been no differentiation between Close Corporations and Private Companies, whether for Accreditation with a SETA or QCTO, or even Approval in terms of Regulations from Dept. of Labour or Dept. of Transport. It comes as something of a surprise then, that having complied in all other respects, these Close Corporation Providers are being marginalised by DHET.

The purpose of this submission is for urgent attention be given to this situation, bearing in mind that the deadline for applying for DHET Registration is 30 June 2017. The current situation is putting literally thousands of businesses at risk, not to mention all those who are reliant on the employment from these businesses. We would suggest actions that would alleviate this problem and facilitate the Registration of all Private Training Providers.

While the DHET has acknowledged the problem and has indicated they are looking into it, time is running out very rapidly, and it is for this reason that we approach the Minister directly for appropriate consideration and timeous action.

PRELUDE

According to Government Notice No. 118, 10 FEBRUARY 2017, (GOVERNMENT GAZETTE No. 40613, 10 FEBRUARY 2017), Private education and training providers, registered for qualifications and/or part-qualifications which are registered on the NQF, are required to register with DHET by 30 June 2017.

THE BACKGROUND

The abovementioned Government Notice, otherwise known as Joint Communiqué 1 of 2016 refers to the “*WHITE PAPER FOR POST-SCHOOL EDUCATION AND TRAINING, BUILDING AN EXPANDED, EFFECTIVE AND INTEGRATED POST-SCHOOL SYSTEM*” (As approved by Cabinet on 20 November 2013) in addressing the Registration of Private education and training providers. Within this White Paper, I would take the liberty of highlighting some excerpts relating to Private Training Providers:

- Private institutions play a significant role in providing post-school education to South Africans. (Page 42)
- A typology of different private institutions will be developed, and the Department will reflect on whether a uniform policy is required for the private sector. The DHET will also undertake a thorough review of the regulation and quality assurance of private providers. (Page 43)
- The DHET must develop better communication between itself, the CHE, SAQA, Umalusi and the SETAs, as well as clearer processes for private provider registration and accreditation. Ultimately, we will develop a simple and efficient registration, monitoring and regulatory system for dealing with private providers. (Page 43)

THE PROBLEM

Unfortunately, it would appear that no such typology, reflection or review has been carried out prior to implementing the current registration process, resulting in the registration process being based on 2007 legislation, with no recognition, adjustment or appreciation of the context of Private education and training providers operations or environment.

From initial submissions by these Private education and training providers, the DHET is refusing applications from legally constituted Close Corporations on the grounds that these entities are not registered or recognized as a company in terms of the *Companies Act 1973, Act 61 Of 1973* as per the *Further Education and Training Colleges Act (16/2006): Regulations: Registration of Private Further Education and Training Colleges, 2007*. (**Annexure A: Letter to a Close Corporation Training Provider**) The DHET are recommending to these Close Corporations to convert to a Private Company as the option for gaining access to the registration process.

While there are no definite figures to refer to in terms of the number of Private education and training providers, nor of the number of these Providers which are Close Corporations, conservative estimates are that there are

- 9 000 Private education and training providers and
- the trend indicates that around 40 - 50% are Close Corporations. (3 500 to 4 500)

Annexure B is a sample listing of Private education and training providers who are registered as Close Corporations and you will note that some date back as far as 1988.

The *Companies Act 2008*, enacted in 2011, acknowledges the existence of Close Corporations, permitting their continued existence under more responsible financial requirements. While new registrations have been discontinued, there is no requirement for these Corporations to discontinue or convert to a Private Company, although this option is available. The format of these Close

Corporations is suitable for many Private Training Providers who fall in the SMME category, and their registration is still with the State via CIPC.

While communications with the DHET has revealed that changes to the process may well be implemented, this is only expected in 2019, and is of little use for Close Corporation Private education and training providers who are subject to the 30 June 2017 deadline for submission of registration applications.

PRIVATE EDUCATION AND TRAINING PROVIDERS ENVIRONMENT

The vast majority of the current Private education and training providers operate under the following circumstances:

- a) Most of these providers fall within the SMME category, possibly the reason for many to have opted for the Close Corporation option which was established originally in an effort to encourage entrepreneurship. For those with limited resources but the expertise and knowledge to provide effective training services, this is still a dominating factor for Close Corporation providers.
- b) There majority of Private education and training provider's annual income does not exceed R1m per annum.
- c) In the majority of cases, they do not own premises for training purposes, generally operating from an office only, many of which are home based.
- d) Training interventions are carried out on employer's premises, using appropriate workplace equipment and resources, or hired facilities. These premises are therefore subject to the prevailing OHS policies of the employer or hired facility owner. In these cases, as with the training of Lifting Machine Operators under The Driven Machinery Regulations 2015, the Facilities have to be verified for compliance prior to training, and records kept thereof.
- e) These interventions seldom exceed a total of 10 days duration, averaging more in the 1 – 5 day duration courses.
- f) Furthermore, most work on a train first then pay principle, with many of the interventions being paid for by the employer who is invoiced on completion of training.

The time and costs of Registration with DHET are considerable with regard to the majority of these Private education and training providers who fall in the SMME category, with limited time and resources for aspects outside of their training focus.

While there are still many Private education and training providers who have not been made aware of the registration requirements, general consensus among those who are aware is that there is no objection, whether Close Corporation or Private Company, to Registering with DHET. Most are only too happy to prove their compliance with legislation, albeit not without some unexpected draining of available resources. Most are subject to unfair competition, in that there are unaccredited Providers, who by virtue of not having incurred the costs of accreditation, are offering services at much lower costs, thus unfairly reducing the market available to compliant accredited Private education and training providers. To this extent, any action to reduce this unfair situation is considered acceptable.

However, having said that, if these actions are going to result in even more costs and ultimately the demise of many of these Private education and training providers registered as Close Corporations, then surely some consideration should be given to not only permitting, but encouraging further participation of those who are willing to comply with Regulations aimed at protecting their market? The context of these Private education and training providers is somewhat disparate from that of a full college, and it is these processes in context that need to be addressed in order to accommodate those wishing to prove compliance.

The application of out-dated legislation in present circumstances is both unfair and unjust. Effectively, Close Corporation Private education and training providers are being punished, despite their contribution to skills development, while their ever more adventurous non-accredited competitors continue to gain advantage unabated.

STATUS OF CLOSE CORPORATION TRAINING PROVIDERS

These Close Corporations are all compliant in terms of:

- i. CIPC Registration.
- ii. Accreditation with either a SETA or QCTO or both.
- iii. In many cases, also Approved by Dept of Labour (Lifting Machinery and First Aid) and/or Dept. of Transport (Dangerous Goods).
- iv. Financial requirements in terms of amendments introduced by the Companies Act, 2008, enacted in 2011.

The following also needs to be noted regarding these Close Corporation Private education and training providers:

- a) Many of these providers have been in existence for many years, up to almost 30 years.
- b) Their contribution to the skills development effort is significant, with practical experience to add value to training.
- c) Their numbers could exceed 50% of the total number of accredited Private education and training providers.
- d) They are significant providers of employment.
- e) The format of the business entity, Close Corporation, has never been an issue or a requirement for compliance requirements.
- f) Most of these Close Corporation Private education and training providers fall in the SMME category.

CONVERSION OF CLOSE CORPORATIONS

DHET claims that Close Corporations must convert to a Private Company in order to apply for Registration. While this option is available to Close Corporations in terms of the *Companies Act 71 of 2008*, there is no other legislation that requires these Close Corporations to convert. CIPC have recently issued a statement (**Annexure C**) in which is clearly stated that neither the Legislator nor CIPC have "*any intention to repeal the remaining sections of the Close Corporations Act 2008 and inherently force Close Corporations to convert to companies*". The option to convert submitted by DHET may well not be an option at all to those Close Corporations who in the main have limited resources and work effectively in this environment. The option then becomes convert to a Private Company or close down.

The recommendation to convert to a Private Company is also a little more problematic than it appears. Should a Close Corporation convert at this stage, from the point of view of time alone, these Private education and training providers will not make the 30 June 2017 deadline. Consider the following:

- Conversion from Close Corporation to Private Company – 1 month.
- Obtain a new SARS tax clearance certificate under the new Private Company Registration.
- SETA Accreditation details will have to be altered with each and every SETA and/or QCTO against which a Private education and training provider may be accredited. Anything from 3-9 months.
- Amending all compulsory supporting documentation for the DHET Application, in the form of brochures, audit reports, certificates etc. 5 - 15 working days.

With so few working days left to the 30 June deadline, it is impossible for all these Close Corporations to convert and apply within the next 2 months, more likely this exercise will spread over about a 6-12 month period.

While the forcing of Close Corporations to convert is perceived as an unfair practice, the other consideration here is that of unnecessary financial burden to these entities, as the costs of conversion will require allocation of time and money to exercises in support of the conversion. The costs include:

- the cost of conversion,
- auditor costs,
- costs of amending stationery and marketing tools,
- costs of amending official records etc.

These costs will not have been expected or budgeted for, and in many cases may well exceed the resources of these Private education and training providers. Notwithstanding these circumstances, the question still remains as to why entities which have proven their worth in terms of contributing to upskilling the nation are being unnecessarily disadvantaged?

By rejecting these Close Corporations, it is not just effectively forcing these businesses to close down, but potentially increasing the unemployment rate by thousands and disadvantaging thousands of learners nationwide in South Africa. It is somewhat disturbing that these Close Corporations have proven compliant in all aspects with other appropriate authorities, yet now when confronted with DHET Registration, find their very existence threatened.

CONSTITUTIONAL CONSIDERATIONS

From these excerpts, it is apparent that the context of Private Training Provider conditions should be considered and that these processes should be addressed in handling the Registration of Private education and training providers. The Bill of Rights states under Education:

29. (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that—
- (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.

Close Corporation Private Training Providers cannot afford to discriminate on the basis of race, to do so would be suicidal business practice. These Providers are registered with the State via CIPC. As far as maintaining standards are concerned, these Providers are already accredited, according to the same criteria as a Private Company, with the relevant SETA/s and/or QCTO, and in many cases are also Approved by Dept. of Labour (Lifting Machine Operator Training and First Aid Training) and/or Dept. of Transport (Convey Dangerous Goods by Road).

There are few if any Public Educational Institutions against which these standards can be compared, considering the diverse offerings and operational aspects of Private education and training providers, which is acknowledged in the White Paper. It is inconceivable then, that under such diverse conditions and purposes, that any accredited Private education and training provider should be disadvantaged by being refused registration by DHET, purely on a business format which is still considered a legal entity under all other requirements.

DHET OPERATIONS

It has been witnessed that applications for Registration being delivered to DHET offices are being briefly reviewed and rejected at the entrance to the offices. With no record of applications having been actually received or professionally returned with appropriate DHET letters providing reasons for rejection, it is impossible for DHET to establish any form of statistical returns on the number of applications received and the "shortcomings" of returned applications.

POSSIBLE SOLUTIONS

Ultimately, the registration of Private education and training providers should include all of those currently accredited for qualifications and/or part-qualifications which are registered on the NQF, irrespective of whether they are Private Companies or Close Corporations. All of these Private education and training providers have proven compliant with all requirements in terms of accreditation and Approval, and the format of the business entity is no indication of the quality or reliability of services offered by these providers. Suggestions for consideration include:

- a) The five month period permitted for all Private education and training providers to comply with the Registration requirements is not realistic in terms of the total numbers of these providers. This period needs to be extended anything from 3 to 6 months further, to end September or end December 2017.
- b) The issue of Close Corporations must be resolved as soon as possible. Rather than rejecting these applications or trying to force conversions, there is more to be achieved by accepting these Close Corporations who are willing to submit to and comply with the registration requirements in their existing format.
- c) The requirement to convert to a Private Company should not be continued. It is an unfair practice against proven businesses who are better suited for Close Corporation format. Continuing such practices could disadvantage not only the business but the employees and Learners of these Providers. Many of these SMME providers are offering regulatory compliance training in terms of various OHS and NRTA regulations, and their input is significant.
- d) Dissemination of information regarding the Registration requirements needs to be better distributed among Private Providers. Newspaper and radio adverts, better spreading of information and support from SETA's etc. This will avoid the current situation where many Providers remain uninformed regarding the current Registration requirements and deadline.

CONCLUSION

The Government Notice No. 118, 10 FEBRUARY 2017, (GOVERNMENT GAZETTE No. 40613, 10 FEBRUARY 2017) appears to have been issued with little perception of the numbers and context within which Private Training Providers effectively operate. It would appear also that much of the anticipated preparation, including dissemination of information for this Registration according to the *"WHITE PAPER FOR POST-SCHOOL EDUCATION AND TRAINING, BUILDING AN EXPANDED, EFFECTIVE AND INTEGRATED POST-SCHOOL SYSTEM"* has not been carried out. The result of this is that Private Training Providers are under extreme pressure to comply, more so Close Corporations, and that these issues need to be addressed before a final "deadline" can be set for Registration. It would be beneficial for all concerned if recognition is given to all Private Training Providers within a reasonable timeframe.

ANNEXURE C – Notice from CIPC relating to Close Corporation registration.



Companies and Intellectual
Property Commission
a member of the dti group

**NOTICE TO CUSTOMERS
(Notice 53 of 2016)**

**FALSE NOTIFICATION REGARDING REPEAL OF CLOSE CORPORATIONS ACT, 1984 AND
FORCED CONVERSION FOR CLOSE CORPORATIONS TO COMPANIES**

Dear Customer

CIPC has been notified by concerned customers of an e-mail notification issued to business owners that the Close Corporations Act, 1984 (the Act) will be repealed with effective date October 2017 and that all close corporations must convert to companies before such date.

CIPC would like to firmly state that this is false, incorrect and misleading and is regarded by the CIPC as unsolicited marketing by the person who issued it.

It is not the intention of the legislator or the CIPC, to repeal the remaining sections of the Close Corporations Act, 2008 and inherently force close corporations to convert to companies. Nowhere within the Companies Act, 2008, Close Corporations Act, 1984, Companies Regulation, 2011, Close Corporations Act Administrative Regulations or Government Gazette Notification is it stated that the remaining part of the Close Corporation Act, 1984 will be repealed.

The notification may also be interpreted that upon re-instatement of a close corporation (after it has been finally deregistered) the CIPC will force the close corporation to be re-instated / converted to a company. Once again, this is false and incorrect. Upon re-instatement of a close corporation, the CIPC will re-instate it upon the information applicable on the date of final deregistration and therefore, it will be re-instated as a close corporation and will not be forced to convert to a company.

It is trusted that the above clarify and addresses any concerns from business owners regarding forced conversion of their close corporations.

Yours sincerely,

Adv R Voller
Commissioner: CIPC
31/10/2016