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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

NO. 2608

10 October 2022

HIGHER EDUCATION ACT, 1997 (Act No. 101 of 1997)**APPOINTMENT OF AN ADMINISTRATOR FOR THE MANGOSUTHU UNIVERSITY
OF TECHNOLOGY**

I, **Dr BE Nzimande**, Minister of Higher Education, Science and Innovation, in accordance with Section 49B of the Higher Education Act (Act 101 of 1997, as amended) hereby appoint **Professor Lourens Van Staden** as the Administrator for the Mangosuthu University of Technology.

The background and terms of reference for the appointment of the Administrator are attached in the Schedule.

**Dr BE Nzimande, MP****Minister of Higher Education, Science and Innovation****Date: 28/09/2022**

TERMS OF REFERENCE

MINISTER OF HIGHER EDUCATION, SCIENCE AND INNOVATION

THE ADMINISTRATOR FOR THE MANGOSUTHU UNIVERSITY OF TECHNOLOGY

PREAMBLE

1. According to Section 49B (1) of the Higher Education Act (Act 101 of 1997, as amended) (the Act), notwithstanding any other provision of the Act, the Minister may appoint a person as administrator, if any of the following circumstances occur:
 - (a) An audit of the financial records of a public higher education institution or the report by an independent assessor or any other report or information reveals financial or other maladministration of a serious nature or serious undermining of the effective functioning of the public higher education institution;
 - (b) In the event that the Minister has reasonable grounds to believe that the council of the public higher education institution concerned has failed to comply with the directive within the stated period, or the steps taken, fail to remedy the deficiency within a reasonable period of time;
 - (c) the council of the public higher education institution requests such appointment; or
 - (d) if the council of the public higher education institution is deemed to have resigned as contemplated in section 27 (8).
2. Section 49(B)(1A) requires that the Minister **must**, before appointing an administrator,
 - (a) give written notice that complies with section 42 (3) to the council of the higher education institution concerned of his or her intention to make such an appointment;
 - (b) provide the council of the higher education institution concerned with the reasons for the appointment;
 - (c) give the council of the higher education institution a reasonable opportunity to make written representations; and
 - (d) consider the representations contemplated in paragraph (c).
3. Furthermore, Sections 49BA and 49F provides for the publication of appointment of an Administrator; and the role, powers, functions and duties of the Administrator, respectively.

BACKGROUND

4. On 04 August 2021, the Minister of Higher Education, Science and Innovation (the Minister) appointed Professor Anthony Staak, as the Independent Assessor for Mangosuthu University of Technology in accordance with section 44(1) of the Act. The appointment and the terms of reference were published in the Government Gazette No 674, Notice No 45062 of 27 August 2021.
5. The terms of reference required the Independent Assessor to conduct an investigation into:
 - a) various allegations made by the Vice-Chancellor (VC), Dr Duma Malaza in his correspondence to the Department in March and April 2020;
 - b) allegations of misconduct and mismanagement against the VC;
 - c) circumstances and reasons for the suspension of the VC and other senior managers in April 2020;
 - d) the functioning, efficacy and relationships between the governance and executive management structures and portfolios;
 - e) the circumstances that led to the cash-flow problems of the University; and
 - f) any matters that, in the opinion of the Assessor, may impact on the effective functioning of the University, from the analysis of problems relating to governance and management.
6. The Independent Assessor commenced his work on 01 October 2021 and reported to the Minister within 45 days as was stipulated in the terms of reference. The Minister subsequently approved the Report on 11 March 2022. The approved Report was published in the Government Gazette No. 46088, Notice No 1931 of 25 March 2022.
7. This Report follows three other reports of independent assessors. As Mangosuthu Technikon, the then Minister of Education, Professor Kader Asmal appointed Professor Jaap Durand as an Independent Assessor, whose report was published in Government Notice No. 411, Gazette No. 20485 of 17 September 1999. When it became Mangosuthu University of Technology in 2008 the then Minister of Education, Mrs Naledi Pandor appointed Dr Vincent Maphai as an Independent Assessor. The Report was published in Government Notice No. 1340, Gazette No. 31689 of 10 December 2008. Again, in May 2018, the then Minister of Higher Education and Training, Mrs Naledi Pandor appointed Professor Barney Pitso and Ms Judy Favish as Independent Assessors, whose report was published in Government Notice No. 1268, Gazette No. 42053 of 23 November 2018.

8. Of note, is the strong overlap between Professor Staak's findings and the findings of previous assessors; and that there is clearly a long history of dysfunctionality at the University. Recurring themes across the various assessors' findings include governance and management problems characterized by conflict and role confusion; human resources capacity issues; weak policy environment; weakly formulated academic project; and an institutional identity and culture that is not consistent with the understanding of what a university should be.
9. The various independent assessor reports made sensible recommendations that need(ed) to be put in place to help the University recover from its myriad of problems. On one occasion, the University has been placed under administration. Yet despite these interventions, the problems have persisted.
10. Although the current Independent Assessor report did not necessarily recommend the dissolution of the Council. The Minister considered the Report of the Independent Assessor, the response of the Council of the Mangosuthu University of Technology, the advice of the Council on Higher Education; the history of the University; and other recent developments at the University.
11. The CHE's analysis of the Council response to the report of the Independent Assessor is that the Council merely approached the Assessor's report from a legal as opposed to reflective perspective; and that the response is not persuasive enough to challenge the Assessor's findings and recommendations. The CHE also observes the Council's inability to take some responsibility; and its incapability to take meaningful action to address the multiple and intersecting problems at the institution
12. This information has given the Minister reasonable grounds for the dissolution of the current Council of the University, namely:
 - a. The Council's inability to take some responsibility; and its incapability to take meaningful action to address the multiple and intersecting problems at the institution.
 - b. There is major fruitless and wasteful expenditure that the University has accrued from its reckless decisions regarding the former senior managers, including the former VC.
 - c. The considerable harm done to the reputation of the University under its watch.
13. After careful consideration of the above and other developments or state of affairs at the University, it is indicative that the fiduciary duty of the Council has been compromised, and the dissolution of the Council and the consequent appointment of an administrator is therefore in the best interest of the University.

TERMS OF REFERENCE OF THE ADMINISTRATOR

Duties of the Administrator

14. The general and specific duties for the Administrator are to:

- a) Take over the role, powers, functions and duties of the Mangosuthu University of Technology Council for a period of 24 months.
- b) Identify and initiate processes and initiatives that will restore proper governance and management at the University.
- c) Initiate the independent external investigation (a forensic audit) into the range of financial control weaknesses and suspected financial irregularities as a matter of urgency. Further, where criminal activity is evident, full legal processes must follow so that there is visible consequence management for illicit practice.
- d) Develop and begin the implementation of a 5-year development plan that will address the range of problems and challenges that have been identified in all the Independent Assessor reports and in the CHE's institutional audit reports.
- e) Take responsibility for the appointment and for the filling of senior level posts including that of the Vice-Chancellor and Principal, within 12 -18 months of the term of office of the Administrator.
- f) Review the senior appointments made in 2022 to ensure that the institutional statute and all applicable policies were strictly adhered to. Further to this, the Administrator must ensure that there are necessary employment probity assessments for new management recruits.
- g) Ensure that a new council is constituted in accordance with the institutional statute as soon as is practicable; and that there is a proper induction of all members and an effective handover of the governance role to the new Council. The recommendation of a probity assessment for potential members of Council must be followed through.

Assistance to Administrator

15. In accordance with section 49C of the Act, the Administrator may with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist him in the performance of these functions.

Remuneration

16. In terms of Section 49D of the Act, the Minister, in consultation with the Minister of Finance, must determine the remuneration and allowances to be paid to the Administrator and any other persons appointed in terms of paragraph 14 above.
17. All costs associated with the appointment of the Administrator and any other person contemplated in paragraph 14 above, are for the account of the Mangosuthu University of Technology.

Period of Appointment

18. The Administrator is appointed for a period of 24 months from **28 September 2022**.
19. In terms of Section 49E, the Mangosuthu University of Technology Council Council is dissolved from the date the Administrator is appointed
20. While the appointment is for 24 months, should the Administrator complete the work in a shorter time frame, the administration will cease earlier.

Reporting

21. The Administrator shall report to the Minister or any delegated officials in the Department of Higher Education and Training on a quarterly basis; and must at the completion of the appointment period, submit a written report to the Minister within 30 days.

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