CHAPTER 3 – FINANCIAL GOVERNANCE AND CONTROLS – THE STATUTORY PERSPECTIVE

“The principle of public accountability bears upon decision-making, the spending of funds and the achievement of results. Firstly, it requires that individuals or institutions should demonstrate responsible actions to one or more constituencies. Secondly, it requires that individuals or institutions receiving public funds should be able to report how, and how well, money has been spent. Thirdly, it requires that institutions should demonstrate the results they achieve with the resources at their disposal.” – (South Africa, 1997a:p 1.22).

3.1 INTRODUCTION

The RAU is governed by the Constitution of the Republic of South Africa, the Higher Education Act of 1997, as well as the statute of the RAU as discussed in chapter 2 of this thesis. As such, the RAU is classified as a public higher education institution.

Financial controls, procedures and governance measures that should be in place at the RAU, and for that matter at other public higher education institutions, are dictated firstly by the acts and statutes governing these institutions.

The purpose of this chapter is to discuss the general statutory financial controls, procedures and governance measures that must be in place at the RAU in terms of the Constitution of the Republic of South Africa, the Higher Education Act, the statute of the RAU and other acts. As such the policies, procedures manuals and codes of conduct developed later on in this thesis for application to procurement strategies must be written in conformance with the statutory rules that apply to the RAU.
3.2 FINANCIAL CONTROLS AND PROCEDURES PRESCRIBED BY THE CONSTITUTION

The Constitution of the Republic of South Africa deals with finance in chapter 13 (South Africa, 1996). No specific reference is made to finances relating to education. However, the Constitution sets out a number of general principles in terms of which funds are allocated or utilised. These general principles cover issues such as the equitable distribution of revenue raised nationally (South Africa, 1996:s 214 (1)) and the fact that national, provincial and municipal budgets must promote transparency and accountability (South Africa, 1996:s 215 (1)).

Section 217 of the Constitution addresses procurement in some detail. Cognisance must be taken of these important principles enshrined in the Constitution as the RAU receives a large portion of its income from public funds and may, based on court cases, be classified as an organ of state (refer to chapter 5 of this thesis). Furthermore, as the focus of this thesis is purchasing governance and control, the Constitutional stipulations regarding procurement will be quoted below (South Africa, 1996:s 217):

“217 (1) When an organ of the state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for -

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.”
3.3 FINANCIAL CONTROLS AND PROCEDURES
PRESCRIBED BY THE HIGHER EDUCATION ACT

The Higher Education Act, Act No 101 of 1997 (as amended) sets out a number of requirements and principles in respect of the finances of institutions of higher education.

The first reference to finances is found in the preamble to the act where it is stated that higher education institutions are to enjoy freedom and autonomy in their relationship with Government within the context of public accountability (South Africa, 1997b).

The second reference to finances is set out in chapter 2 of the Higher Education Act in terms of which the Council on Higher Education (hereafter CHE) was established. In terms of the provisions, the CHE must advise the Minister of Education on inter alia:

- A mechanism for the allocation of public funds;
- Student financial aid;
- Student support services; and
- The governance of higher education institutions and the higher education system (South Africa, 1997b:s 5).

Interestingly enough, no definition is provided for the term “governance” and it is unclear at the outset whether the act refers to academic or institutional governance or financial governance, although the former of the two concepts was probably the intended result.

In terms of section 6 of the Higher Education Act (South Africa, 1997b), every higher education institution is obliged to provide any information requested to the CHE, which by implication would include financial and related information.

Section 20 (5) states that a public higher education institution may not sell or alienate (in any other way) any immovable property acquired with the financial assistance of the State (South Africa, 1997b). This section is particularly important given the prominence of control over the sale, letting and use of assets that will be incorporated in the policy documents and procedures manual presented later on in this thesis.
The governance of public higher institutions is dealt with in chapter 4 of the Higher Education Act. There, in terms of section 26, every institution must have:

- A council;
- A senate;
- A principal;
- A vice-principal;
- Chancellor;
- A students’ representative council;
- Institutional forum; and
- Any other structure that the institution may determine to be important to its governance.

Chapter 4 of the Higher Education Act continues by setting out the responsibilities of the bodies listed above. As alluded to previously, the focus is on institutional governance which will be discussed in more detail in chapter 5 of this thesis. There are no specific responsibilities in respect of finances listed in chapter 4 of the Act (South Africa, 1997b:s 26-38). However, in general it is the responsibility of council, as the highest decision making body of a public higher education institution, to ensure good order and governance (Ncayiyana & Hayward, 2000:58).

Chapter 5 of the Act is dedicated to the funding of public higher education and as such will be quoted below (South Africa, 1997b:s 39-42):

**"Allocation of funds by Minister**

39. (1) The Minister must, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of public higher education, which must include appropriate measures for the redress of past inequalities, and publish such policy by notice in the *Gazette*.

(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate the public funds to public higher education on a fair and transparent basis.

(3) The Minister may, subject to the policy determined in terms of subsection (1), impose-

(a) any reasonable condition in respect of an allocation contemplated in subsection (2); and

(b) different conditions in respect of different public higher education
institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.

(4) The policy referred to in subsection (1) may discriminate in a fair manner between foreign students who are not permanent residents of the Republic and students who are citizens or permanent residents of the Republic when the amount payable is determined.

Funds of public higher education institutions

40. The funds of a public higher education institution consists of –
(a) funds allocated by the Minister in terms of section 39;
(b) any donations or contributions received by the institution;
(c) money raised by the institution;
(d) money raised by means of loans;
(e) income derived from investments;
(f) money received for services rendered to any other institution or person;
(g) money payable by students for higher education programmes provided by the institution;
(h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
(i) other receipts from whatever source.

Records to be kept and information to be furnished by council

41. (1) The council of a public higher education institution must in the manner determined by the Minister-
(a) keep records of all its proceedings; and
(b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of a public higher education institution as a whole, of its substructures and of bodies operating under its auspices.

(2) The council of a public higher education institution must, in respect of the preceding year and by the date or dates and in the manner determined by the Minister, provide the Minister with-
(a) a report on the overall governance of the public higher education institution;
(b) a duly audited statement of income and expenditure; and
(c) a balance sheet and cash flow statement.

(3) The council of a public higher education institution must provide the Minister with-

(a) the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and

(b) such additional information as the Minister may reasonably require.

41A (1) If an audit of financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, notwithstanding any other provision in this Act or a private Act of Parliament, appoint a person as administrator to perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months.

(2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.

**Action on failure of council to comply with this Act or certain conditions**

42. (1) If the council of a public higher education institution fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution, the Minister may call upon such council to comply with the provisions or condition within a specified period.

(2) If such council thereafter fails to comply with the provision or condition, the Minister may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned.

(3) Before taking action under subsection (2), the Minister must-

(a) give notice to the council of the public higher education institution concerned of the intention so to act;

(b) give such council a reasonable opportunity to make representations; and

(c) consider such representations.

(4) If the Minister acts under subsection (2), a report regarding such action must be tabled in Parliament by the Minister as soon as reasonably practicable after such action.”
From the extract above, the following may be highlighted as important financial issues to consider in the context of this thesis:

- A record must be kept of all assets, liabilities, income and expenses;
- An institution must issue a report on overall governance (although no definition is provided for this term);
- Audited statements of income and expenditure must be lodged; and
- Institutions must provide the Minister of Education with information in terms of the Reporting by Public Entities Act, which will be discussed below.

In other words, no specific guidance is given in respect of how corporate governance and accountability, overall governance and control must be ensured.

### 3.4 REPORTING BY PUBLIC ENTITIES ACT

The purpose of the Reporting by Public Entities Act, Act No 93 of 1992 (as amended), is to provide for reporting to Parliament by public entities, including institutions such as RAU as required by the Higher Education Act in section 41 (3). The reason why public higher education institutions fall under the Reporting by Public Entities Act, is because these entities are dependent on allocations by Parliament for 50% or more of its funds (South Africa, 1992:s 1).

In terms of the Reporting by Public Entities Act, institutions listed in the act must:

- Report to Parliament on its activities and financial affairs (South Africa, 1992:s 2);
- Keep records to fairly present the state of affairs and business of the institution (South Africa, 1992:s 5);
- Make out financial statements consisting of:
  - A balance sheet dealing with the state of affairs of the public entity;
  - An income statement;
  - A cash-flow statement;
  - Notes to the financial statement;
  - A director’s report;
• Group financial statements; and
• Other statements that may be required (South Africa, 1992:s 6 (2));

• The financial statements must be audited and the auditor’s report attached to the financial statements (South Africa, 1992:s 6 (3));

• The financial statements must conform with generally accepted accounting practice and fairly present the financial performance and changes in the financial position of the entity during the financial year concerned and the financial position at the end of any financial year in accordance with Schedule 4 of the Companies Act (South Africa, 1992:s 6 (4)). Although the financial statements of universities such as the RAU were previously based on the SAPSE (South African post-secondary education) standards, financial statements conforming with generally accepted accounting standards have been issued from financial years ending 31 December 2001 (RAU 2001b:30-40) in accordance with a request from the Department of Education; and

• The financial statements must provide information that is material to the affairs of the institution (South Africa, 1992:s 6).

Other issues relevant to this thesis that are addressed in the Reporting on Public Entities Act are set out below, together with commentary in italics pertaining to purchasing that is relevant to this thesis:

• The director’s (or grouping fulfilling a similar role, such as council and the management committee at RAU) report shall set out relevant performance information regarding the economic, efficient and effective application of resources and the amount of money received from the State (South Africa, 1992:s 7). Specific information must be provided in respect of purchasing efficiencies;

• Internal audits must be conducted to promote the safeguarding and control of assets, compliance with the Reporting on Public Entities Act and other acts governing the institutions and the economical and efficient management of the resources and the effective performance of the functions of the institutions (unless the Minister of Education, based on the recommendation of the council or board, is of the opinion that the benefits derived from the internal audit does not justify the benefit) (South Africa, 1992:s 8). As will be seen from the procedures manual set out in Part B of this thesis, internal audit will be involved in procurement and contract adjudication; and

• Entities that fall under the abovementioned act must have an audit committee in place
consisting of not less than three persons that have been appointed by the board of directors, provided that the majority of the members of the audit committee shall be non-executive members of the board or non-executive persons (South Africa, 1992:s 14). The policy, procedures manual, standard forms and other processes detailed in Part B of this thesis have indeed been accepted by the RAU audit committee that consists of non-executive members.

From the above discussion set out in paragraphs 3.2 to 3.4, it is clear that although governance structures, reporting steps and funding issues for institutions of higher educations are addressed in the Constitution, Higher Education Act and Reporting on Public Entities Act, very little guidance is given on how an institution such as RAU should be governed and how efficiency and effectiveness must be achieved. This thesis will now consider whether the statute of the RAU includes specific details in respect of how this university should be controlled or governed, specifically in respect of procurement.

3.5 FINANCIAL MATTERS ADDRESSED BY THE STATUTE OF THE RAU

The statute of the RAU deals primarily with the office bearers, governance structures and consultative bodies of the university and their election. As set out in chapter 2 of this thesis, there is no specific chapter in the statute dealing with the finances of the RAU or the financial controls that should be in place at this institution.

However, there are clauses in the statute that would have an impact on financial governance and controls that are listed below:

- The rector is responsible for the daily management, general supervision and control of the university (RAU, 1999:s 14 (2));
- Council has responsibility for the strategic management and financial management of the RAU (RAU, 1999:s 26 (2));
- Council is responsible for keeping accounting records of the assets, liabilities, income, expenditure and other financial transactions of the RAU and its substructures (RAU, 1999:s 26 (4));
Council must submit reports as set out in section 41 (2) of the Higher Education Act as discussed in paragraph 4.3 of this thesis (RAU, 1999:s 26 (5));

The management committee controls, manages and administers the RAU from day to day (RAU, 1999:s 38 (1)); and

Trust funds and the investment thereof are handled by a Board of Trustees (RAU, 1999:s 53).

There are two committees of the council of the RAU that address financial issues, being the human resource committee and the audit committee.

The human resource committee assists council and the management committee in fulfilling their responsibility to ensure that the overall compensation policy of the RAU is fair, effective and affordable (RAU, 2000:1). This committee falls out of the scope of this thesis.

The audit committee, which was established on 21 July 1995 (RAU, 1995:1), adopted a charter on 2 October 1995 that sets out its purpose, composition, duties and responsibilities. The contents of the charter of the audit committee are set out in Table 3.1 below (RAU, 2001).

<table>
<thead>
<tr>
<th>Charter of the Audit Committee</th>
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<tbody>
<tr>
<td><strong>Purpose</strong></td>
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<tr>
<td>• To provide channels of communication between the council of the RAU, the management committee, external auditors and internal auditors;</td>
</tr>
<tr>
<td>• To aid council in fulfilling its responsibilities to ensure effective, sufficient and continued internal control, information systems, accounting practice, audit processes, and financial reporting.</td>
</tr>
<tr>
<td><strong>Composition</strong></td>
</tr>
<tr>
<td>• Chairperson of council;</td>
</tr>
<tr>
<td>• Five non-executive members of council;</td>
</tr>
<tr>
<td>• Chairperson of audit committee appointed by council from members of audit committee;</td>
</tr>
</tbody>
</table>
The following persons are invited to attend the audit committee meetings:

- Rector
- Registrar (Finance)
- Senior external audit partner
- Chief director finance
- An expert employee from the Department of Accounting
- Chairperson of the students’ representative council
- A representative of senate.

Note: In practice, the risk manager (since May 2000) and internal auditor (since November 2000) are also invited to attend and report to the audit committee. The charter has not been amended in this respect.

Duties and responsibilities

- Assessment of policy and procedures adopted by the management committee in order to ensure that the accounting and related control systems are sufficient and function effectively;
- Assessment of important risks that the RAU is faced with together with the internal control structures that would mitigate the risks;
- Assessment of the effectiveness of internal audit;
- Examination of issues reported by external and internal audit, including internal control weaknesses and recommendations for improvements;
- Assessing the planning and scope of the external audit;
- Investigating material irregularities reported by external audit;
- Investigating material issues that have not been dealt with in respect of accounting and audit problems that were found during the external audit;
- Assessing coordination between the external and internal audit function;
- Considering the external audit fees and, when necessary, the appointment of external auditors;
- Determining whether the RAU complies with all relevant acts;
- Considering the financial statements as a fair presentation of the financial position of the RAU; and
- Other issues as determined by council.

TABLE 3.1 – CHARTER OF THE AUDIT COMMITTEE OF THE RAU
3.6 SUMMARY

The statutory requirements related to the governance and financial controls of public higher education institutions such as the RAU, focuses on the building blocks of institutional governance.

The focus of the statutory requirements (specifically in the Constitution, Higher Education Act and statute of the RAU) is not financial in tone, but rather academic or institutional in nature and contains very little practical guidance that may be applied in the establishment of control over purchasing. In addition, very little information is given on the financial governance of institutions. For purposes of this chapter, perhaps the most accurate definition of this type of governance is the definition put forward by Balderstone (Balderstone, 1995; as quoted by Ricci, 1999:2):

“A general definition of governance refers to the distribution of authority and functions among the units within a larger entity, the modes of communication and control among them, and the conduct of relationships between the entity and the surrounding environment. When that entity is a contemporary U.S. university, the conventional building blocks for governance within the university are its trustees, the executive administration, the faculty, and other groupings and units, such as student government and alumni.”

The next chapter will further consider Government’s perspective on the financial governance and controls that should be in place in institutions of public higher education and the extent to which Government prescribes how institutions should function and be controlled, albeit not through legislation.
BIBLIOGRAPHY


