

CHILE: Legal framework of private higher education

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Notes:

- 1) The Chilean Education Act of 1990 regulates all levels of education, from pre-school to tertiary, and both the public and the private sectors. In this summary only the norms pertinent to private higher education are considered.
- 2) There are three types of institutions of higher education in Chile: universities, professional institutes, and technical training centers. Public institutions exist only at the university level.
- 3) Other legislation regulates public funding of universities, student aid, and support for research. Generally speaking, private institutions in Chile are not subsidized by the government, and their students are not eligible for subsidized educational loans, but they can apply to research funding and, increasingly, to other contest-based development funding programs as well.
- 4) Norms on consumer protection apply equally to higher education students of the public and private sectors.
- 5) A summary of the legal framework for higher education in Chile, prepared by the Ministry of Education, can be found (in Spanish) at http://w3app.mineduc.cl/edusup/instituciones/inst_marc_lega.html#III

EDUCATION ACT N° 18,962, OF 1990 (LEY ORGÁNICA CONSTITUCIONAL DE ENSEÑANZA)

ABRIDGED TRANSLATION OF THE SECTIONS RELEVANT TO PRIVATE HIGHER EDUCATION

PRELIMINARY TITLE

The Program for Research On Private Higher Education (PROPHE) seeks to build knowledge about private higher education around the world. PROPHE focuses on discovery, analysis, and dissemination. PROPHE neither represents nor promotes private higher education. Its main mission is scholarship, which, in turn, should inform public discussion and policymaking. PROPHE's Working Paper series is one vehicle to promote these goals.

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Article 1°.- This Constitutional Organic Education Act (...) regulates the process for the official recognition of educational institutions of any level.

(...)

TITLE III State Official Recognition of Higher Education Institutions

Section 1 General Norms

Article 29.- The state shall officially recognize the following institutions of higher education:

- a) Universities;
- b) Professional Institutes;
- c) Technical Training Centers, and
- d) Military and Police Academies.¹

Article 30.- Public universities, professional institutes, and technical training centers can only be created by law. To obtain official recognition, private universities will be established according to the procedures of this Act, as not-for-profit organizations.

Private professional institutes and technical training centers can be established as legal entities, under the norms of this act, by any individual or organization (...).

Military and police academies are created and operate according to their own regulations, and under the authority of the Ministry of Defense.

(...)

Section 2 On the Superior Education Council² and the accreditation system

¹ Academia Nacional de Estudios Políticos y Estratégicos; Academias de Guerra y Politécnicas; Escuelas de Armas y Especialidades de las Fuerzas Armadas; Escuela Técnica Aeronáutica de la Dirección General de Aeronáutica Civil; Academia de Ciencias Policiales de Carabineros de Chile; Escuelas Matrices de Oficiales de las Fuerzas Armadas; Escuela de Carabineros y Escuela de Suboficiales de Carabineros de Chile, y Escuela de Investigaciones Policiales e Instituto Superior de la Policía de Investigaciones de Chile.

² Superior Education Council.

Article 32.- There shall be a Superior Education Council, created as an autonomous public body with independent legal capacity and patrimony. It will coordinate with the government through the Ministry of Education.

(...) Its membership shall be composed as follows:

- a) The Minister of Education or his delegate.
(...)
- b) One university academic designated by the rectors of Chilean public universities (...);
- c) One academic designated by the rectors of the autonomous private universities (...);
- d) One academic designated by the rectors of the autonomous professional institutes (...);
- e) Two representatives of the Academies of the Institute of Chile, elected by the said Institute among its members;
- f) One academic designated by the Supreme Court of Justice;
- g) One academic designated jointly by the Superior Council of Science and the Superior Council of Technological Development (...);
- h) One academic designated by the Supreme Commanders of the Armed Forces and the General Director of the Police;
- i) The Executive Secretary, with speaking rights only.

The academics shall have the rank of full professor, or its equivalent.

(...)

The members of the Council will serve their appointments for four years. They can be reappointed only once.

(...)

Article 37.- The Superior Education Council shall have the following functions:

- a) Approve or reject the institutional projects presented by universities and professional institutes seeking official recognition;
- b) Verify continuously the development of the approved institutional projects, according to the accreditation norms established in this Act;
- c) Establish a system of examination of students of institutions subject to accreditation (...).

This examination will evaluate the performance of the students and the fulfillment of the approved study plans;

- d) Recommend the Minister of Education the imposition of sanctions against institutions under accreditation;
- e) (...);
- f) Serve as a consulting body to the Ministry of Education in the matters considered in this Act;
(...).

(...)

Article 39.- Accreditation encompasses the approval of the institutional project and the process of evaluation of the progress and realization of the educational project of a new institution, based on significant development variables, such as curriculum, teaching, physical plan and infrastructure, and economic and financial resources.

Accreditation shall be carried out by the Superior Education Council.

After obtaining their full autonomy, universities and professional institutes may voluntarily submit to the Council the documentation necessary to provide the users of the system with adequate information.

Article 40.- All new institutions of higher education shall present the Superior Education Council an institutional development project, as indicated in the aforementioned article.

(...)

The Superior Education Council will certify its approval or rejection of the said project, with copy to the Ministry of Education.

Article 41.- The Superior Education Council will verify the development of the approved institutional project, for a period of six years.

Every year, the Council will issue a progress status report for each project under its supervision, making any necessary observations and setting deadlines for their resolution. Furthermore, it may perform partial evaluations and request from the institutions any relevant information.

In addition, the Council will examine selected courses from the programs subject to accreditation.

The examination shall be deemed favorable when more than fifty percent of the students pass the examined course.

If the institution fails to resolve the observations made by the Council, the Council shall decree the total examination of the program involved, or the suspension of all new enrollments in some or all of the programs offered by the institution. A reiteration of the problems that originate the observations will authorize the Council to request from the Ministry of Education the cancellation of the official recognition and closing down of the institution.

Article 42.- After six years of accreditation, universities and professional institutes deemed by the Council to have developed their projects satisfactorily shall obtain from the Council their full autonomy. This condition enables them to grant degrees independently.

In case of unsatisfactory development, the Council will extend accreditation of the institution for up to five additional years, with the option of suspending the enrollment of new students. If, at the expiration of the new term, the institution has still not satisfied the

requirements of the Council, the Council will request from the Ministry of Education the cancellation of the official recognition and closing down of the institution.

Article 43.- During their accreditation periods, universities and professional institutes will undergo this approval and monitoring process for every new degree program they wish to open.

Section 3 Official recognition of universities

Article 44.- Universities not created by an act of Congress shall be established by a notarized deed containing the articles of incorporation and bylaws of the new entity.

Article 45.- The bylaws shall contain the following matters:

- a) Identification of the organizers of the university;
- b) Name and domicile of the entity;
- c) Goals of the institution;
- d) Economic means available for its operation, which shall be certified by the Superior Education Council;
- e) Governance structure of the entity, which shall exclude the voting participation of students and administrative personnel, both within collegiate bodies and in the election of authorities;
- f) The degrees that will be offered initially, and
- g) Procedures for amending the bylaws and the dissolution of the entity.

(...)

Article 47.- The Ministry of Education will have up to 90 days to object to the legal registration of a university if it has failed to comply with the requirements prescribed above (...).

In this case, the university will have 60 days to correct those defects.

(...)

Article 48.- After completing its legal registration with the Ministry, the university will have one year to obtain its official recognition, or it shall have its registration cancelled.

(...)

Article 50.- A new university shall be officially recognized when the following requisites have been met:

- a) Be established and registered as a legal entity according to the previous articles, which shall be certified by the Ministry of Education;
- b) Have available the educational, economic, and physical resources necessary to offer the programs it seeks to open, as certified by the Superior Education Council, and
- c) Have obtained the approval by the Superior Education Council of its institutional project and the corresponding study programs (...).

Article 51.- Once these requisites have been met, the Ministry of Education will issue the respective official recognition decree within 30 days..

Universities can only begin their teaching activities after their official recognition.

(...)

Article 53.- In the following cases, after hearing the Superior Education Council and the affected university, the Ministry will revoke the official recognition of a university and cancel its registration:

- a) If the university failed to comply with its declared goals;
- b) If its actions were against ethics, public order or national security;
- c) If bylaws were severely breached,
- d) If it ceased to offer degree programs.

(...)

(...)

Section 4 On the official recognition of professional institutes

Article 56.- Professional institutes not created by an act of Congress shall be established as private legal entities, as per Article 30 of this Act.

The articles of incorporation of professional institutes shall contemplate the following:

- a) Identification of the organizers of the institute;

- b) Name and domicile of the entity;
- c) Goals of the institution;
- d) Economic means available for its operation, which shall be certified by the Superior Education Council;
- e) Governance structure of the entity, which shall exclude the voting participation of students and administrative personnel, both within collegiate bodies and in the election of authorities;
- h) The degrees that will be offered initially, and
- i) Procedures for amending the bylaws and the dissolution of the entity.

Article 58.- The Ministry of Education will have up to 90 days to object to the legal registration of a professional institute if it has failed to comply with the requirements prescribed above (...).

In this case, the institute will have 60 days to correct those defects.

(...)

Article 59.- After completing its legal registration with the Ministry, the professional institute will have one year to obtain its official recognition, or shall have its registration cancelled.

(...)

Article 61.- A new professional institute shall be officially recognized when the following requisites have been met:

- a) Be established and registered as legal entity (...);
- b) Have available the educational, economic, and physical resources necessary to offer the programs it seeks to open, as certified by the Superior Education Council, and
- c) Have obtained the approval by the Superior Education Council of its institutional project and the corresponding study programs (...).

Article 62.- Once these requisites have been met, the Ministry of Education will issue the respective official recognition decree within 30 days..

Professional institutes can only begin their teaching activities after their official recognition.

Article 63.- In the following cases, after hearing the Superior Education Council and the affected professional institute, the Ministry will revoke the official recognition of a professional institute and cancel its registration:

- a) If the professional institute failed to comply with its declared goals;
 - b) If its actions were against ethics, public order or national security;
 - c) If bylaws were severely breached,
 - d) If it ceased to offer degree programs.
- (...)

Section 5 Official recognition of technical training centers

Article 64.- Technical training centers not created by an act of Congress shall be established as private legal entities, as per Article 30 of this Act. The articles of incorporation of technical training centers shall contemplate the following:

- a) Identification of the organizers of the center;
- b) Name and domicile of the entity;
- c) Goals of the institution;
- d) Economic means available for its operation, which shall be certified by the Ministry of Education;
- e) Governance structure of the entity, which shall exclude the voting participation of students and administrative personnel, both within collegiate bodies and in the election of authorities;
- f) The degrees that will be offered initially, and
- g) Procedures for amending the bylaws and the dissolution of the entity.

Article 65.- To apply for official recognition, technical training centers will submit to the Ministry a notarized copy of their articles of incorporation, together with their institutional project, which shall include a description of the educational, economic, financial, and physical resources available for their operation.

(...)

Article 66.- The Ministry of Education will have up to 90 days to object to the legal registration of a technical training center if it has failed to comply with the requirements prescribed above (...).

In this case, the institute will have 60 days to correct those defects.

(...)

Article 67.- Once these requisites have been met, the Ministry of Education will issue the respective official recognition decree within 30 days.

Article 68.- Technical training centers can only begin their teaching activities after their official recognition.

Article 69.- The Ministry of Education will verify the development of the approved institutional project of a technical training center, for a period of six years.

After six years of accreditation, technical training center deemed by the Ministry of Education to have developed their projects satisfactorily shall obtain from the Ministry their full autonomy. This condition enables them to grant degrees independently.

In case of unsatisfactory development, the Ministry will extend accreditation of the center for up to five additional years, with the option of suspending the enrollment of new students. If, at the expiration of the new term, the center has still not satisfied the requirements, the Ministry will have the option of proceeding to cancel its official recognition and removing it from the registry.

During the period of accreditation, the opening of new branch campuses or new programs, as well as any amendments to the articles of incorporation, bylaws or regulations, or changes to the degree programs offered, shall follow the same procedure prescribed for the official recognition of the center.

Article 70.- The Ministry of Education may decree the cancellation of the official recognition of a technical training center, after hearing the affected institution,. In the following cases:

- a) If it failed to comply with its declared goals;
- b) In the case of the previous article;
- c) If the center's actions were against ethics, public order or national security;
- d) If its bylaws and regulations were severely breached,
- e) If it ceased to offer technical degrees.

(...)

Section 6

Official recognition of the degrees awarded by the education institutions dependent of the Ministry of Defense.

(...)

TITLE IV
Final Norms

(...)

Article 76.- Autonomy is the right of every institution of higher education to govern itself, according to its bylaws, in everything conducive to the fulfillment of its ends, and it includes academic, economic, and administrative autonomy.

Academic autonomy includes the power to decide independently how the functions of teaching, research, and service shall be carried out, and to define the curriculum of their study programs.

Economic autonomy enables institutions to freely deploy their resources to pursue the goals dictated by their bylaws and compatible with the law.

Administrative autonomy authorizes institutions to organize as they deem adequate, within the limits of the law and their bylaws.

Article 77.- Academic freedom includes the liberty to open, organize and maintain educational institutions, in compliance with the appropriate legal requirements. It also contains the freedom to search for and teach the truth according to the norms of reason and the methods of science.

Article 78.- Neither autonomy nor academic freedom authorize institutions of higher education to abet or promote actions or behavior incompatible with the legal order, or activities aimed at disseminating, directly or indirectly, any partisan political orientation. The essence of those rights exclude political or ideological indoctrination or proselytizing, or any teaching that reaches beyond the common terms of objective information and reasoned discussion, in which the generally acknowledged advantages and shortcomings of systems of thought or doctrines are expounded.

Article 79.- The campuses and facilities used by institutions of higher education to carry out their functions cannot be utilized for actions that may be detrimental for such functions.

(...)

Article 80.- Higher education institutions shall contemplate in their bylaws the means to assure compliance with the principles indicated in the previous articles.

Article 81.- All universities in existence as of December 31, 1980, as well as the universities and professional institutes created from their partition, and their successors, shall maintain their university status and full autonomy.

Article 82.- Universities and professional institutes created and organized under the norms of the decree with force of law of the Ministry of Education N° 1, of 1980, and N° 5, of 1981,³ will *ipso iure* be deemed officially recognized.

The universities and professional institutes that, at the time of the publication of this Act, had already obtained their autonomy according to the previous legislation, shall *ipso iure* maintain it.

(...)

³ Previous legislation on private institutions of higher education.