

ARGENTINA:

Legal framework of private higher education

These notes and abridged translation were prepared by Dante J. Salto,
PROPHE Doctoral Research Associate
dsalto@albany.edu

Notes:

- 1) The Higher Education Act of 1995 regulates university and non-university higher education institutions, both public and private sectors. In this summary only the articles pertinent to private higher education are considered.
- 2) There are four types of institutions of higher education in Argentina: 1) universities, 2) university institutes, 3) professional and technical institutes, and 4) teacher training institutes.
- 3) Generally speaking, private higher education institutions in Argentina are not subsidized by the government, but their graduate students can compete for federal scholarships/fellowships. Also, under special circumstances, private institutions can apply to public research funding, and increasingly, to other contest-based development public funding programs as well.
- 4) More information about Argentine higher education legislation, can be found (in Spanish) at <http://www.me.gov.ar/spu/legislacion/>

HIGHER EDUCATION ACT #24,521, OF 1995

(LEY DE EDUCACIÓN SUPERIOR)

ABRIDGED TRANSLATION OF THE SECTIONS RELEVANT TO PRIVATE
HIGHER EDUCATION

TITLE I: Preliminary dispositions

Article 1. — This law comprises higher education institutions at the university and non-university level, at the national, provincial or local jurisdictions, both public and private institutions, all of them as part of the National Education System regulated by the act #24,195.

(...)

TITLE II: On Higher Education

Chapter 2 On the structure and articulation

Article 5- Higher Education is comprised by non-university education institutions, whether teacher training, humanities, social, vocational or artistic studies and by university-level education institutions, including universities and university institutes.

(...)

TITLE III: On non-university higher education

Chapter 1 Jurisdictional responsibility

Article 15 – The provinces and the City of Buenos Aires are in charge of the governance and organization of non-university higher education in their respective areas of competence, as well as the enactment of legislation to regulate the creation, modification and cessation of non-university institutions, and the establishment of conditions that fit their operation, all within the framework of Act #24,195, as set out in this act and the corresponding federal agreements.

(...)

TITLE IV: On university higher education

Chapter 1 University institutions and their functions

Article 26. — University higher education shall be in charge of national, provincial and private universities, recognized by the national government and shall be in charge of recognized public and private university institutes, all of which integrates the National University System.

(...)

Chapter 2

Autonomy, its scope and guarantees

Article 29. — University-level institutions have academic and institutional autonomy, which basically comprises the following elements:

- a) To enact and amend their statutes, which will be reported to the Ministry of Culture and Education for the purposes set out in Article 34 of this law;
- b) To define its governing bodies, to establish their functions, to decide and to choose their authorities according to their statutes and the specificities required by this law;
- c) To manage its assets and resources, according to its statutes and the laws regulating this matter;
- d) To establish new undergraduate and graduate course of studies;
- e) To formulate and develop new course of studies, research, and outreach and community services including the teaching of professional ethics;
- f) To confer academic degrees and professional diplomas in accordance with the enabling conditions set forth in this act;
- g) To provide education for purposes of experimentation, pedagogical innovation or professional teaching practice in pre-university levels...;
- h) To establish the system of access, retention and promotion of faculty and service staff.
- i) To appoint and remove personnel;
- j) To set the system of admission, retention and promotion of students, as well as to set the mechanisms to request credit transfer from other institutions.
- k) *Only applies to public universities.*
- l) To establish a regime of coexistence;
- m) To develop and participate in ventures that promote the advance and application of knowledge.
- n) To keep and develop educational, scientific, cultural relationships with other institutions in the country and abroad;
- o) To officially recognize student unions, which fulfill the requirements established by the university's regulation, giving legal status to such entities.

(...)

Section 3

Assessment and accreditation

Article 44. — Universities must ensure the operation of internal instances of institutional assessment, which will aim to analyze the achievements and difficulties in fulfilling their functions, and suggest measures for improvement. Self-assessments shall be supplemented with external assessments to be made at least every six (6) years, within the framework of objectives defined by each institution.

The assessment includes the evaluation of teaching, research and outreach/community services, and in the case of national universities also institutional management. External assessments shall be conducted by the National Commission for University Evaluation and Accreditation or private entities established for this purpose, as provided in Article 45, in both cases with the participation of recognized academic peers. The recommendations for institutional improvement arising from the assessments shall be public.

Article 45. — Private entities to be established to assess and accredit universities shall be recognized by the Ministry of Culture and Education, after consulting the National Commission for University Evaluation and Accreditation. The standards for the accreditation processes will be those established by the Ministry in consultation with the Council of Universities.

Article 46. — The National Commission for University Evaluation and Accreditation is a decentralized organization, which operates under the Ministry of Culture and Education, and has the following tasks:

- a) Coordinate and conduct the external assessments, as provided in article 44;
- b) Accredit undergraduate programs referred to in Article 43, as well as graduate programs, in any field of study according to the standards established by the Ministry of Culture and Education in consultation with the Council of Universities;
- c) Rule on the consistency and feasibility of the institutional project that is required by the Ministry of Culture and Education to authorize the establishment of a new national university after its creation or to recognize a provincial university.
- d) Develop reports required to grant provisional functioning authorization and official recognition of private universities, as well as the development of the reports that evaluate the provisional period of operation of such institutions.

Article 47. — The National Commission for University Evaluation and Accreditation shall consist of twelve members, appointed by the Executive branch of the national government after the proposals done by the following agencies: three (3) by the National Inter-University Council, one (1) by the Private University Rectors Council, one (1) by the National Academy of Education, three (3) by the Senate, three (3) by the House of

Representatives, and one (1) by the Ministry of Culture and Education. The appointed members shall hold office for a period of four years, with a partial replacement system. In all cases, the members must be prominent scholars in the academic and scientific sphere. The Commission has its own budget.

(...)

Chapter 5

On private university institutions

Article 62. — Private universities shall be non-profit institutions, obtaining legal status as civil associations or foundations. They will be authorized by decree of the National Executive, which will allow private institutions to run under provisional functioning authorization for six (6) years, after a favorable report of the National Commission for University Evaluation and Accreditation, and with precise indication of the programs, degrees and diplomas that the institution will offer and issue.

Article 63. — The report issued by the National Commission for University Evaluation and Accreditation, referred in the previous article will be based in the following criteria:

- a) Moral, financial and economic responsibility of the members of the associations or foundations;
- b) Feasibility and consistency of the institutional and academic project, and its relevance and suitability to the principles and rules of this law;
- c) The academic level of the faculty initially involved in the project, their career in scholarly research and university teaching;
- d) The quality of the academic and research programs proposed;
- e) The financial resources, the equipment and the infrastructure which are available to comply with teaching, research and extension services;
- f) Its international connections and the ability to reach agreements and partnerships with other universities abroad.

Article 64. — During the provisional functioning authorization period:

- a) The Ministry of Culture and Education will monitor the new institution in order to assess, based on reports issued by the National Commission for University Evaluation and Accreditation, its academic level and the degree of fulfillment of its objectives and plans of action;
- b) Any amendment to the statutes, establishment of new undergraduate and graduate programs, changes of or modification within the course of studies, shall require Ministry authorization;
- c) The institutions shall explicitly indicate the provisional nature of the authorization that they hold in every official documentation or advertisement.

Failure to comply with the requirements referred to in the subparagraphs b) and c) will trigger sanctions as stipulated under regulations of this law, which can reach the revocation of the provisional functioning authorization.

Article 65. — After six (6) years of being granted the provisional functioning authorization from the date of official provisional authorization, the institution may apply for full recognition to run as a private university institution, which is granted by decree of the National Executive after a favorable report issued by the National Commission for University Evaluation and Accreditation.

The Ministry of Culture and Education oversees the operation of recognized private institutions in order to verify whether they comply with the conditions stipulated when they were authorized. Failure to comply will result in penalties as required under specific regulations of this law. The penalties may reach a permanent closure of the institution.

Article 66. — The national government may provide financial aid, to those full recognized private institutions, for the development of research projects within those institutions, based on the evaluation mechanisms and eligibility criteria that apply to the whole system.

Article 67. — The final decisions refusing full recognition, as well as those decisions withdrawing the full or provisional recognition, may be appealed to the Federal Court in the jurisdiction of the institution appealing, within fifteen (15) business days of notification the decision being appealed.

Article 68. — Private establishments whose creation has not been authorized in accordance to the appropriate legislation cannot use names or issue certificates, diplomas or degrees as a university. Violations to this norm will result in actions under the regulations of this law, which can lead to the immediate and definite closure of the institution and for those responsible the prohibition to teach, as well to work for the government or to be members of any civil association involved in higher education.

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Chapter 6

Governance and coordination of the university system

Article 70. — It is the duty of Ministry of Culture and Education to develop general policies concerning university matters, ensuring the participation of the coordination and consultation bodies specified in this law, and respecting the autonomy regime established for university institutions.

Article 71. — In their respective areas, the coordinating and consulting bodies will be the Council of Universities, the National Inter-University Council, the Private University Rectors Council, and the Regional Councils for Higher Education Planning.

Article 72. — The Council of Universities will be chaired by the National Minister of Education, or his designee with rank not lower than Secretary, and it will comprise the

executive board of the National Inter-University Council, the executive board of the Private University Rectors Council, a representative of each Regional Council for Higher Education Planning who shall be a Rector of a university institution, and a representative from the Federal Council on Culture and Education.

Its functions will be:

- a) To propose the definition of university development policies and strategies, promote cooperation among university institutions, as well as promote the design of guidelines for the coordination of the university system;
- b) To deliver its opinion on those matters on which its intervention is required in accordance to this law;
- c) Arrange criteria and guidelines with the Federal Council on Culture and Education for the articulation among higher education institutions.
- d) Issue statements on other matters referred for consultation through the appropriate ways.

Article 73. — The National Inter-University Council shall comprise the rectors or presidents of national and provincial university institutions recognized by the Nation, and that are definitely organized, and the Private University Rectors Council shall comprise the rectors or presidents of private university institutions. Those councils will have the following functions:

- a) To coordinate plans and activities in academic matters, scientific research, and services among the university institutions of their respective scope;
- b) To be consultative bodies on matters and issues anticipated by this law;
- c) To participate in the Council of Universities.

Each council will develop its own rules which govern the internal operations.