

PERU:

Legal framework of private higher education

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Notes:

- 1) Higher education in Peru is divided in university and non-university. Public and private higher education institutions are autonomous from the national government. The *Asamblea Nacional de Rectores* is the public autonomous organization constituted by rectors of public and private universities in charge of the study, coordination, and orientation of the university activities in Peru.
- 2) Peru is one of the few countries in Latin America to legally allow for-profit institutions in the private sector.
- 3) Three pieces of legislation are pertinent to the private sector: 1) University law No. 23,733 (1983) and its successive amendments (university-level); 2) Legislative Decree No. 882 (1996) on Promotion of Investment in Education (all educational levels); and 3) the Law on Higher Education Institutes and Schools No. 29,394 (2009) (non-university-level).
- 4) More information about Peruvian higher education legislation, can be found (in Spanish) at <http://www.minedu.gob.pe/normatividad/buscar.php>

UNIVERSITY LAW #23,733 OF 1983

(Ley Universitaria)

ABRIDGED TRANSLATION OF THE SECTIONS RELEVANT TO PRIVATE HIGHER EDUCATION

Chapter 1: General provisions

(...)

Article 6. — Universities are public or private, as established on the initiative of the state or individuals. The former are legal persons under internal public law and the latter are legal persons under private law and nonprofit status. The surplus that could result at the end of the fiscal year, in the case of private universities has to be invested in the institution and scholarships. The surplus can be neither distributed among its members nor directly or indirectly utilized by them.

The assets of the universities that cease their activities will be allocated to other universities to continue fulfilling the same educational purpose.

Article 7. — The law creating a university establishes an Organizing Committee of the university that must fulfill its role and conduct its activities for a maximum and nonrenewable period of five years. In the case of a private university, its founders, organized as legal persons of private rights and nonprofit status, appoint the members of the Organizing Committee. The members of the Organizing Committees must have the diploma or degree conferred to practice teaching activities in universities as referred in article 45 of this law.

During the prescribed period, and annually, the National Assembly of Rectors (*Asamblea Nacional de Rectores*) assesses the new university in accordance to the provisions in the law that created the institution and to this law. In case of a negative result of the assessment, at the end of the period it will be forwarded to Congress for the repeal of the law that created the university.

(...)

Chapter 5: On faculty

(...)

Article 54. — Private university professors are governed by the provisions of its university statutes, which set the standards for entry to teaching, its assessment and promotion. The provisions of this chapter also apply to them, except for the Article 52 items 'e' and 'g', and Article 53. The labor law in the private sector determines the rights and benefits of such professors.

(...)

Chapter 12: On the economic regime

(...)

Article 78. — Public universities are free. The payment of tuition in private universities will be done by a scale system, which can be replaced by other forms of assistance or social promotion. In case private universities receive state subsidies they will allocate part of those subsidies to scholarships and student loans.

These one-time benefits cover academic or professional studies of the semesters or academic years required to obtain the academic or professional degree, with an additional extension of two more semester or one academic year.

Each university determines in its statutes the temporal suspension of the gratuity for the period following a record of deficient academic performance, as well as the conditions to regain gratuity.

(...)

Article 84. — Each public university establishes its annual budget proposal and submits it to the National Assembly of Rectors before June 30th of each year. Private universities requesting state aid have to follow the same procedure as public universities. The National Assembly of Rectors formulates the corresponding project. All projects and requests must be justified.

(...)

Article 86. — Public universities are subjected to the National System of Control. So are private universities only for the aid that they receive from the state. The National Assembly of Rectors can practice audits designed to ensure the proper use of the resources by the universities. Within six months of completion of the budget period, public universities account for the fiscal year to the General Comptroller, report to the Congress, and publish its balance sheet in the Official Bulletin.

Private universities account in an equivalent way and provide the same report for the financial aid that they receive from the state. They publish their balance sheet in the Official Bulletin.

Article 87. — Universities are exempted from any existing or future taxation. They benefit from free postal and telegraphic services, and cultural activities that they organize are exempted from taxation. The exemption of import taxes is limited to the assets necessary to the fulfillment of its purposes.

(...)

Chapter 13: On the coordination among universities

Article 90. — Public and private university rectors constitute the National Assembly of Rectors which aims are the study, coordination, and general orientation of the university activities in the country, as well as its economic strengthening and responsibility to the national community. At the rector's regional level it constitutes the Regional Councils.

(...)

Article 92. — The National Assembly of Rectors has the following specific duties that cannot be delegated:

- a) Inform, when the legislative power requests it, in the creation, merger, or closure of public and private universities;
- b) Submit to the executive and legislative powers the public universities annual budget projects and the private universities request of financial aid, with the information related to each proposal, and formulation of the resulting overall budget project;
- c) Publish an annual report on the status of university level and on the general criteria for university policy;
- d) Choose the university rectors that comprise the Interuniversity Coordination Commission under Article 93 of this law;
- e) Coordinate by providing prior and indispensable information for the creation of new programs, professional degrees, and specializations agreed by the university and the faculties where the programs will be offered;
- f) Agree on the minimum requirements for the granting of degrees y university diplomas, and the unification of their denominations subject to the exclusive right of each university to set its own curriculum and additional requirements;
- g) Assess the new universities in accordance to the provisions of Article 7 of this law;
- h) Designate the universities that can validate studies, degrees, and diplomas obtained in other countries;
- i) Elect the members of the *Consejo de Asuntos Contenciosos Universitarios*; and
- i) Collect the most up to date statutes of all universities.

Article 93. — The National Assembly of Rectors is represented by an Interuniversity Coordination Commission, which has the functions assigned by the General Rules of the Interuniversity Coordination, to the effect that the decisions of the National Assembly of Rectors are taken in a timely manner. The Interuniversity Coordination Commission is chaired by the president of the National Assembly of Rectors and is formed by the rectors of the universities of *San Marcos, Cusco, Trujillo, Arequipa, Ingeniería, Agraria, Pontificia Universidad Católica*, and by six other rectors elected every two years by the National Assembly according to geographical distribution, two of which are from private universities.

LEGISLATIVE DECREE #882 OF 1996 -

(Decreto Legislativo 882 - Ley de Promoción de la Inversión en la Educación)

Chapter 1: General provisions

Article 1. — This law establishes conditions and safeguards to promote investment in educational services, in order to contribute to the modernization of the educational system and expand its scope and coverage.

This law applies to all private educational institutions in the country, such as private educational centers and programs at any level or modality, private institutes and schools, private universities and graduate schools, and all the institutions that fall under the educational sector.

Article 2. — Any natural or legal person has the right to free private enterprise to carry out activities in education. This right includes the right to establish, promote, lead, and manage private nonprofit and for-profit educational institutions.

Article 3. — The right to acquire and transfer property on private educational institutions is governed by the provisions of the Constitution and the common law. It involves the responsibility of the owner in leading the institution and the achievement of the educational objectives.

Article 4. — Private educational institutions may legally organize under any of the forms provided by common law and in the corporate system, including the forms of civil associations, foundations, cooperatives, individual enterprises of limited liability, and sole proprietorship.

Article 5. — (...) At the private universities, the statute or internal procedure of each establishes the mode of participation of the university community, comprising faculty, students, and alumni. The statute or internal procedure should allow the participation of the university community on the issues related to the academic system, research, and outreach.

Article 6. — Private educational institutions teaching and administrative staff are exclusively governed by the labor regime of the private sector.

Article 7. — Guarantees of free private enterprise, property, freedom of contract, equal treatment and the other guarantees recognized by the Constitution apply to private educational institutions, as do the provisions of the legislative decrees No. 662 and 757, including all the rights and guarantees established in those decrees. Also applying to private educational institutions are the provisions of the legislative decrees No. 701 and 716 and their successive amendments, as well as other legal provisions guaranteeing free competition and consumer protection.

(...)

Article 9. — Only universities grant Bachelor degrees. Master's and Doctorates are granted by universities and their graduate schools.

The private universities and graduate schools statutes or internal regulations establish the diplomas and degrees that they confer, as well as the requirements to obtain them, subject to the rules on that matter.

Private graduate schools which do not belong to universities and that are created after the enactment of this legislative decree shall be governed by the same applicable rules as universities.

Private institutes and non-university higher education institutions (*escuelas superiores*) grant professional degrees with prior authorization from the Ministry of Education, subject to the norms established by decree.

LAW ON HIGHER EDUCATION INSTITUTES AND SCHOOLS #29,394 OF 2009

(Ley de Institutos y Escuelas de Educación Superior)

Chapter 1: Object and scope

Article 1. — Object of this law. This law regulates the establishment and operation of higher education institutes and schools, public or private, led by natural or legal entities that are part of the higher education level in the national education system, in accordance to the provisions of the General Law on Education.

Article 2. — Scope. This law encompasses the following institutions:

- a) Teaching training/pedagogical higher education institutes and schools.
- b) Technological higher education institutes and schools.
- c) Arts education higher education institutes and schools.
- d) Vocational and professional schools for training in the Defense and Homeland sectors.
- e) Schools and other non-university higher education centers which are authorized to grant professional degrees on behalf of the nation.

(...)

Chapter 3: Creation, licensure, requirements and scope

Article 7. — Creation. Public institutes and schools are established by supreme resolution, endorsed by the Ministries of Education and Economy and Finance, with the prior favorable judgment of the corresponding General Education Directorate and the Ministry of Economy and Finance. Private institutions are established through individual initiative, whether natural or legal.

In both cases, they must comply with the requirements and provisions established by this law.

(...)

Title 5: Sources of financing and property

Article 53. —Resources and properties of private institutes and schools. The private institutes and schools organize and manage their assets, resources, and properties in accordance to the right to financial autonomy stated in this law, establishing their own economic, administrative and tuition systems, which are made available to students, according to this law.

Title 6: Interruption, closure, and transference

Article 54. — Interruption of activities. Interruption comes at the request of the promoter of the private institute or schools, and of the Ministry of Education in the case of public institutions; the duration is up to 1 (one) calendar year, as long as the completion of the current academic semester is ensured. If after that period the institution is not reopened, the operation authorization automatically expires, which is completed through a resolution from the competent educational authority. The provisions set in the first paragraph are given without prejudice to any liability incurred by representatives or promoters of institutes and schools to students, and the sanctions that the Ministry of Education may establish.

Article 55. — Closure. The closure of an institute or school, public or private, involves the definitive end of its activities. It is a decision made when the institution does not comply with the provisions established by this law or its own procedures. Additionally, closure is determined when requested by owners of private institutes and schools, as long as they ensure the completion of the current academic semester, or automatically if the service is not reestablished after being interrupted for one year, with the same consequences established in the last paragraph of the previous article.

La closure report creates the definitive cancellation of the functioning authorization and its corresponding record.

(...)

Article 57. — Reopening. The reopening of a private institute or school must be informed by the developer or owner to the competent authority with a notice not less than thirty (30) calendar days of the date of resumption of activities, which will coincide with the date of the relevant semester. The institution must assure the academic conditions, infrastructure, proper equipment and furniture, similar or better than that existing when the institution was authorized.

(...)

Article 59. — Transfer. The transfer of the operating license of a private institute or school has to follow relevant contractual standards and is brought to the Ministry of Education for the corresponding recognition within the respective calendar period after the legal transfer occurred.