

# BRAZIL:

## Legal framework of private higher education

These notes and abridged translation were prepared by Dante J. Salto,  
PROPHE Doctoral Research Associate<sup>1</sup>  
dsalto@albany.edu

### Notes:

- 1) The Law of Basic Tenets and Guidelines of Brazilian Education (LDB) of 1996 regulates the entire Brazilian education system including higher education, university and non-university higher education institutions, both public and private (nonprofit and for-profit) sectors. In this summary only the articles pertinent to private higher education are considered.
- 2) Currently, there are four types of institutions of higher education in Brazil: 1) universities, 2) university centers, 3) faculties, and 4) federal centers of education.
- 3) Brazil is one of the few countries in Latin America to legally allow for-profit institutions in the private sector.
- 4) There are three pieces of legislation pertinent to the private sector: 1) The 9131 act (1995) and the modifications to it introduced by 2) the 9,870 act (1999); 3) the LDB No. 9394 (1996).
- 5) More information about Brazilian higher education legislation, can be found (in Portuguese) at  
<http://www4.planalto.gov.br/legislacao/legislacao-por-assunto/educacao-teste/educacao#superior>

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# **LAW OF BASIC TENETS AND GUIDELINES OF BRAZILIAN EDUCATION #9,394, OF 1996**

(LEI DE DIRETRIZES E BASES DA EDUCAÇÃO NACIONAL)

ABRIDGED TRANSLATION OF THE SECTIONS RELEVANT TO PRIVATE  
HIGHER EDUCATION

## **TITLE V: On educational levels**

### Chapter 4 On higher education

Article 45. — Higher education will be provided by public or private higher education institutions, with various degrees of scope or specialization.

Article 46. — The authorization and recognition of courses, as well as the accreditation of higher education institutions, have limited timeframes, being periodically renewed after regular assessment process.

I. — After the period assigned to solve the deficiencies identified by the assessment referred in this article, there will be a re-assessment, which depending on the situation may result in the deactivation of courses and licenses, intervention of institution, temporary suspension of the rights of autonomy, or disqualification.

(...)

Article 52. — Universities are multidisciplinary institutions to train high level professionals, conduct research, engage in extension, and cultivate of knowledge, which are characterized by:

I. — institutionalized intellectual production through the systematic study of the most relevant themes and issues, from both scientific and cultural as well as regional and national standpoints;

II. — one third of the faculty, at least, with master's and doctorate academic degrees;

III. — one third of the faculty in full time status.

Separate paragraph. — The law authorizes the establishment of specialized universities by field of study.

Article 53. — In the exercise of their autonomy, universities are ensured the following functions:

- I. — create, organize, and close in their own institutions, courses and programs set out by this law, according to the general rules of the Union and, where appropriate, the educational system;
- II. — develop courses and programs curricula, subject to the relevant general guidelines;
- III. — establish plans, programs, and projects of scientific research, artistic production, and extension activities;
- IV. — set the number of vacancies in accordance to the institutional capacity and the external demands;
- V. — develop and reform their statutes and regulations in line with the pertinent general norms;
- VI. — confer degrees, diplomas, and other certifications;
- VII. — sign contracts, agreements, and covenants;
- VIII. — approve and execute investment plans, programs, and projects related to work, services, and general acquisitions, as well as institutional arrangements to administer earnings;
- IX. — administer earnings and proceeds as set forth in the constitution, laws, and corresponding statutes;
- X. — receive grants, donations, bequests, legacies, and financial cooperation as products of agreements with public and private entities.

## **9,131 ACT OF 1995 AND MODIFICATIONS BY 9,870 ACT OF 1999**

Article 7-A. — Legal persons of private rights, sponsors of higher education institutions as set by the subsection II of the article No. 19 of the Law No. 9394 (December 20th, 1996), may adopt any of the forms permitted by law, of civil or commercial nature, and when established as foundations, shall be governed by the provisions of the article No. 24 of the Brazilian Civil Code (Art. added by Law No. 9870, of November 1999).

Separate paragraph. — Any statutory change in the sponsor, duly endorsed by the competent agencies, should be communicated to the Ministry of Education, for appropriate action.

Article 7-B. — The sponsors (mantenedoras) of nonprofit higher education institutions shall (Article added by Law 9870, of November 1999):

I. — develop and publish their financial statements each year, in consultancy with the fiscal council, or a similar entity;

II. — maintain complete and regular bookkeeping of all taxation books, according to pertinent legislation, as well as any other acts or operations that may modify its equity, in books referring to the formal procedures to ensure their accuracy;

III. — keep in good condition, for a period of five years from the date of issue, the documents proving the origin of their revenue and the allocation of their expenses, as well as performing any other acts or operations that may change their financial situation;

IV. — submit the documentation, at any time, for Government audit;

V. — allocate its assets to another counterpart institution or to the Government in case of termination of its activities, promoting, if necessary, the corresponding statutory change;

VI. — demonstrate, when requested by the pertinent agency:

a. — the use of their surplus funds for the purposes of the educational institution;

b. — non-payment or provision of advantages or benefits in any form or title to its founders, officers, partners, council members or equivalent.

Separate paragraph. — Proof that institutions follow the points mentioned in this article is essential for purposes of licensing and re-licensing of the higher education institution.

Article 7-C. — Entities sponsoring communitarian, religious and philanthropic private higher education institutions or institutions established as foundations cannot be for-profit and have to adopt the provisions of article No. 14 of the Internal Revenue Code and Art. 55 of Law 8212 of July 24, 1991, in addition to meeting the requirements of article No. 7-B. (Article added by Law No. 9870, of 23.11.1999).

Article 7-D. — Entities sponsoring for-profit higher education institutions, although civil in nature, should develop in each fiscal year, financial statements certified by competent professionals. (Article added by Law No. 9870, of 23.11.1999).