

LAW ON POLITICAL PARTIES – LAW N. 9,096 OF SEPTEMBER 19th, 1995.

Prescribes the provisions pertaining to political parties, regulates Articles 17 and 14, Paragraph 3, item V, of the Federal Constitution.

The Vice-President of the Republic, exercising the duties of the President of the Republic,

Makes known that the National Congress has decreed and I sanction the following Law:

TITLE I

GENERAL PROVISIONS

Article 1. Political parties are legal entities governed by private law which are established to ensure, in the interest of the democratic regime, the authenticity of the representative system and to defend fundamental rights set forth in the Federal Constitution.

- Law N. 10,406/2002 (Brazilian Civil Code):

“Article 44. The legal entities governed by private law are as follows:

[...]

V – political parties.

[...]

Paragraph 3. Political parties shall be organized and shall operate pursuant to provisions established in specific legislation.

[...]

Article 2,031. Associations, companies and foundations which have been established pursuant to provisions set forth in previous legislation, as well as entrepreneurs, shall comply with the provisions set forth in this Code by January 11th, 2007.

Sole Paragraph. The provisions established in this article shall neither apply to religious organizations nor to political parties.”

- Normative Act of the Federal Revenue Service (IN-RFB) n. 1,183/2011, which “Disciplines the National Register of Corporate Taxpayers (CNPJ)”:

“Article 5. Individuals and entities listed below are obliged to register at the CNPJ:

[...]

The entities listed below shall be registered as parent offices:

I – national, regional, municipal or district steering bodies of political parties;
and

[...]

Paragraph 6. Coalitions formed by political parties shall not register at the CNPJ.”

Article 2. Political parties may be created, merged, incorporated or terminated provided their programs respect national sovereignty, the democratic regime, the plurality of political parties and the fundamental rights of individuals.

- Federal Constitution (CF/88), Article 17.

Article 3. Political parties shall be provided with autonomy to define their internal structure, organization, and operation.

- Federal Constitution (CF/88), Article 17, Paragraph 1, as amended by Constitutional Amendment (EC) n. 52/2006: “Political parties shall be provided with autonomy to define their internal structure, organization, and operation, and to adopt the selection criteria and the composition of their electoral coalitions, without being required to follow the same party alliances at the national, state, district or municipal levels, and their by-laws shall establish rules for party loyalty and discipline.”
- See Law N. 9,504/1997, Article 6: establishment of coalitions in majority and proportional elections.
- TSE Case of 11-12-2008, in Special Electoral Appeal (REspe) n. 31,913: it is admissible that the Electoral Justice examines illegalities and nullities in case of conflict of interest between regional and municipal steering bodies of political parties, which may have an impact on the elections.

Article 4. Political party affiliates shall have equal rights and duties.

Article 5. The actions performed by a political party have a national nature and shall be exercised pursuant to the party’s by-laws and program, not subject to foreign entities or governments.

Article 6. It is not permitted that political parties promote military or paramilitary training or make use of such type of organizations nor is it permitted that the parties oblige their members to use uniforms.

- Federal Constitution (CF/88), Article 17, Paragraph 4.

Article 7. After acquiring legal personality pursuant to provisions established in civil legislation, political parties shall register their respective by-laws at the Superior Electoral Court (TSE).

- Federal Constitution (CF/88), Article 17, Paragraph 2.

Paragraph 1. Only political parties that enjoy from nationwide relevance shall be entitled to register their by-laws, noting that such nationwide support shall be proved by at least half percent of the votes cast in the last general election for the Chamber of Deputies (House of Representatives), disregarded for that purpose both blank and spoiled ballot papers, distributed through one third or more of the Brazilian States, counting on the vote support of at least one tenth percent of the electorate.

- See first and third annotations to Article 9, Paragraph 1, and Article 55 of this law.
- TSE Resolution (RES) n. 22,711/2008: constitutionality of this provision.

Paragraph 2. Only parties that have registered their by-laws at the Superior Electoral Court (TSE) shall be entitled to participate in the electoral process, to be eligible to monies from the Party Fund and to be granted free-of-charge access to radio and television, pursuant to the provisions established in this Law.

- Federal Constitution (CF/88), Article 17, Paragraph 3.
- TSE Resolution (RES) n. 22,592/2007: a party that incorporates another is entitled to access the Party Fund amounts due to the incorporated party even before the registration of the said incorporation at the TSE.

Paragraph 3. The registration of the by-laws of a political party at the Superior Electoral Court (TSE) is the only means to protect the exclusive rights to its denomination, acronym and symbols, being other parties forbidden to use variations that lead to error or confusion.

TITLE II

ON THE ORGANIZATION AND POLITICIANS

CHAPTER I

ON THE CREATION AND REGISTRATION OF POLITICAL PARTIES

Article 8. A political party's registration request, which is to be submitted to a competent Civil Registry of Legal Entities at the Federal Capital, shall be subscribed by at least one hundred and one of its founders, with voting residence in at least one third of the Brazilian States and shall be accompanied of:

- I – certified copy of the minutes of the meeting in which the party was founded;
 - II – copies of the Official Journal that published its program and by-laws in full;
 - III – list of all party founders, featuring their full names, city of birth, voter's card number, voting district, polling station, Municipality and State, occupation and residence address.
- TSE Resolution (RES) n. 22,510/2007: it is not possible to replace a voter's card by an ID card during the collection of supporting signatures for the creation of a new political party.

Paragraph 1. The registration request shall bring the names and positions of interim party leaders and the address of the main office of the said party in the Federal Capital.

- TSE Resolution (RES) n. 22,316/2006: the address to be provided is the address of the political party's national headquarters in the federal capital.
- TSE Resolution (RES) n. 23,078/2009: "Phone or fax communications and official letters issued from the Superior Electoral Court (TSE) to the political parties shall be sent to their respective headquarters in the federal capital".

Paragraph 2. After checking if the requirements listed in this article have been met, the Registrar shall make an entry in the corresponding book, issuing a full certificate.

Paragraph 3. After acquiring legal personality pursuant to the provisions established in this article, political parties shall gather, in compliance with Paragraph 1 of Article 7,

support from a minimum number of voters, carrying out acts necessary for the definitive establishment of their bodies and the appointment of their leaders, as provided for in their respective by-laws.

- See annotation to item III of this Article and third annotation to Article 9, Paragraph 1 of this law.

Article 9. After the establishment of the bodies and the designation of the leaders referred to in Paragraph 3 of the previous article, national leaders shall register the by-laws of their parties at the Superior Electoral Court by submitting a request accompanied by the following documents:

I – certified copies of party’s full program and by-laws, as recorded in the competent Civil Registry;

II – certificate of the Civil Registration of Legal Entity referred to in Paragraph 2 of the previous article;

III – certificates issued by Electoral Registries proving that the party gathered the support from a minimum number of voters as established in Paragraph 1 of Article 7.

- TSE Case of 9-27-2011, in Registration of Political Party (RPP) n. 141796: including the certificates signed after the consolidation of Regional Electoral Courts (TREs) or issued after a judgment has been rendered on national party registration, which shall be reviewed and be attached to the registration process at the TSE.

Paragraph 1. The proof of support gathered among a minimum number of voters is checked by means of their signatures, with reference to the numbers of their respective voter’s cards, in lists organized by each Voting District, and the authenticity of both the said signatures and the numbers of voter’s cards is attested by an *Electoral Clerk*.

- See annotation to Article 8, item III of this law.
- Law n. 10,842/2004, Article 4: the activities to be performed in an electoral registry shall be privately exercised by the clerk of court of an electoral registry.
- Non-numbered decree issued by the Superior Electoral Court (Dec.-TSE) on 9-9-1997 in Complaint (Pet) n. 363: denies request for validation of the authenticity of supporting signatures of voters that have been collected through the internet. TSE Resolution (RES) n. 22,553/2007: it is not possible to forward support forms to voters through the internet in view of the requirements established in Article 9, Paragraph 1 of Law n. 9,096/1995. TSE Resolution (RES) n. 21,966/2004: “Political parties which are processing their registration before the Electoral Justice are entitled to be provided with a list of voters, comprising the numbers of their respective voter’s cards and their respective voting districts”. TSE Resolution (RES) n. 21,853/2004, on the form to collect signatures: it is possible to insert a sentence explaining that the supporting signature does not imply in party affiliation; illiterate citizens may express their support by digitally printing their fingers, provided they are also identified by name, number of voter’s card, voting district and number of polling station, municipality, State and date of issuance of their voter’s cards; admitted the

possibility of the form featuring fields to insert their addresses and telephone numbers.

Paragraph 2. The *Electoral Clerk* shall provide a receipt for each list that is submitted to him/her and, within fifteen days, shall issue their respective certificates, returning the lists to the interested parties.

- See second annotation to the previous paragraph.

Paragraph 3. After a registration request is filed at the Superior Electoral Court, its respective process is assigned within forty-eight hours to a Rapporteur who shall have ten days to consult the Office of the Attorney General and take measures, within the same timeframe, to correct occasional procedural irregularities.

Paragraph 4. The Superior Electoral Court shall register the by-laws of a party within thirty days in case no measures need to be taken or after having executed such procedures.

- See annotation to item II of Paragraph 1 of Article 1 of TSE Resolution (RES) n. 22,610/2007.

Article 10. Changes in the program or by-laws of a party shall be recorded at the competent Civil Registry and forwarded to the Superior Electoral Court.

- TSE Case of 8-12-2010 in Complaint (Pet) n. 93: “changes in the program or by-laws of a party may be submitted separately”.

Sole Paragraph. Political parties shall report the establishment of their steering bodies and the names of the respective members to the Electoral Justice, which shall also be informed of occasional changes in order to update entries made at:

- Paragraph as amended by Article 1 of Law n. 9,259/1996, which also establishes, in Article 3, that this paragraph is applicable to all changes that may occur at any time, even if such changes have been submitted to the Electoral Justice while Law n. 5,682/1971 was still in force.
- TSE Resolution (RES) n. 23,093/2009, which “Establishes the Party Information Management System (SGIP)”, Article 5, head provision: refers to the existence of an external module that allows political parties to submit data to the Electoral Justice through the internet, referring to the establishment and changes of party steering bodies, at any level, and to the registration and cancellation of registration of delegates before the Electoral Justice.

I – the Superior Electoral Court, on the members of party bodies of national relevance;

II – Regional Electoral Courts, on the members of party bodies of state, municipal or district relevance.

Article 11. Parties which have already been registered at the Superior Electoral Court may register, respectively:

I – Delegates, before Electoral Judges;

II – Delegates before the competent Regional Electoral Court;

III – Delegates before the Superior Electoral Court.

Sole Paragraph. Delegates registered by a national steering body are entitled to represent a party before any Electoral Court or Judge; delegates registered by state bodies, only before Regional Electoral Courts and Electoral Judges of the respective State, Federal District or Federal Territory; and delegates registered by municipal bodies, only before the Electoral Judge of the respective jurisdiction.

CHAPTER II

ON PARLIAMENTARY PERFORMANCE

Article 12. Political parties operate through benches established at Legislative Houses, which are to determine their respective leading members pursuant to party's by-laws, to procedural provisions in force at such Houses and to the provisions established in this Law.

- Federal Supreme Court (STF) case of 2-9-2000, in the Direct Action for the Declaration of Unconstitutionality (ADI) n. 1,363-7: constitutionality of this provision.

Article 13. Parties which gathered the support of at least five per cent of the votes cast in each election for the Chamber of Deputies (House of Representatives), disregarded for that purpose both blank and spoiled ballot papers, distributed through one third or more of the Brazilian States, accounting for at least two per cent of the total registered in each State, are entitled do carry on parliamentary activities in all Legislative Houses where they have elected representatives.

- Federal Supreme Court (STF) case of 12-7-2006, in Direct Actions for the Declaration of Unconstitutionality (ADIs) nos. 1,351 and 1,354: declare that this article is unconstitutional.
- TSE Resolutions (RES) nos. 22,132/2005 and 22,280/2006: issues related to the functioning of parties shall not be regarded as electoral matters.

CHAPTER III

ON THE PROGRAMS AND BY-LAWS OF POLITICAL PARTIES

Article 14. In conformity with constitutional provisions and provisions set forth in this Law, the party has autonomy to list its political objectives in its program and to establish its internal structure, organization and operation in its by-laws.

Article 15. The by-laws of a political party shall comprise, *inter alia*, regulations on:

I – name, acronym and establishment of party's main office in the Federal Capital;

II – affiliation and exclusion of party members;

III – rights and duties of party affiliates;

IV – organization and management of the political party, with the establishment of its general structure and identification, composition and attribution of party bodies at the municipal, state and national level, duration of terms served in office and procedures to elect party members;

V – party loyalty and discipline, procedures to investigate violations and to apply penalties, observed the one's rights to due process;

VI – conditions and procedures to appoint party nominees to elective office and related functions;

VII – finances and accounting, also establishing rules that provide for the establishment of the amounts to be spent by party candidates in their own campaign, that establish limits for contributions made by party affiliates and that determine the different sources of party revenues, in addition to the ones set forth in this Law;

VIII – criteria to distribute shares from the Party Fund among party bodies at the municipal, state and national level;

- See annotations to Article 28, Paragraph 3, and Article 37, Paragraph 2 of this law.

IX – procedures to amend party program and by-laws.

Article 15-A. The party body at the municipal, state or national level which does not perform an obligation, violates a right, causes any kind of damage to others or carries out any kind of illegal act shall be held solely responsible, under civil and labor laws, for such practices, disregarded the joint liability with other steering bodies of the political party.

- Article 15-A as amended by Article 2 of Law N. 12,034/2009.

CHAPTER IV

ON POLITICAL PARTY AFFILIATION

- TSE Resolution (RES) n. 23,117/2009: “Establishes rules for political party affiliation, approves a new system for parties to submit data to the Electoral Justice and lays down other provisions”.

Article 16. Only voters with full exercise their political rights will be entitled to join a political party.

- Law N. 6,996/1982, Article 7, Paragraph 2; and TSE Resolution (RES) n. 21,538/2003, Article 17, Paragraph 1; and Article 18, Paragraph 5: electoral registries shall submit a list of voters to the political parties on the 1st and 15th day of each month, or on the first subsequent business day.
- Prohibitions of political and party-related activities: Federal Constitution (CF/88), Article 142, Paragraph 3, item V (military); Federal Constitution (CF/88), Article 128, Paragraph 5, item II, sub-item ‘e’ (members of prosecution offices); Federal Constitution (CF/88), Article 95, sole paragraph, item III (judges); Federal Constitution (CF/88), Article 73, Paragraph 3 and 4 (members of the Federal Court of Accounts – TCU); Supplementary Law (LC) N. 80/1994, Article 46, item V; Article 91, item V; and Article 130, item V (members of the Office of the Public Defender); Electoral Code (CE/65), Article 366 (civil servants of the Electoral Justice).
- TSE Resolution (RES) n. 23,117/2009, Article 1: ineligibility does not prevent one from joining a political party. In that sense, see TSE Cases nos. 23,351/2004; 22,014/2004; and 12,371/1992.

Article 17. A request to join a political party will be granted if all party's regulations and provisions set forth in its by-laws have been duly observed.

- TSE Case of 6-2-2011, in Consultation (Cta) n. 75535: it is not possible to join a political party before the said party is duly established; an individual associated with a party that is still being formed cannot be considered a party affiliate; voters, regardless of holding an elective office or not, are entitled to associate themselves with a political party that is being formed, but cannot change such association into party affiliation after party's by-laws have been registered at the Superior Electoral Court (TSE).

Sole Paragraph. After voter's affiliation request is accepted, s/he will be given a proof of affiliation issued in a form adopted by the party.

Article 18. Voters must be affiliated with a political party for at least one year before the date established for majority or proportional elections in order to run for an elective office.

- TSE Case of 10-13-2011 in Consultation (Cta) n. 150889; TSE Resolutions (RES) nos. 19,978/1997; 19,988/1997; 20,539/1999; 22,012/2005; 22,015/2005; 22,095/2005; and TSE Case of 9-21-2006, in Ordinary Appeal (RO) n. 993: the deadline for party affiliation is equal to the deadline for judges, members from the courts of accounts and from prosecution offices to resign voluntarily in order to compete in a new election. TSE Resolution n. 22,088/2005: civil servants allocated in Electoral Courts must resign voluntarily in order to meet the legal deadline for party affiliation, even if they no longer serve under the body of origin and plan to run in another state, different from their professional domicile. TSE Case n. 11,314/1990 and TSE Resolution (RES) n. 21,787/2004: Military officers are exempted from previous party affiliation, being solely required to submit the request to register their candidacy after having been nominated in a party convention. TSE Resolution (RES) nos. 20,614/2000 and 20,615/2000: Retired military officers shall join the political party within 48h after retiring, in case their retirement occurs after the deadline for party affiliation but before their nomination in a party convention.
- TSE Case of 6-16-2011 in Consultation (Cta) n. 76142: For campaign purposes, it is not possible to consider the period in which the voter served as a founding-member or supporter advocating the creation of the political party.
- TSE Case of 6-2-2011, in Consultation (Cta) n. 75535; "the submission of the listing of a political party, whose by-laws have been registered at the Superior Electoral Court (TSE) within one year prior to the elections does not fulfill the legal requirement that establishes the minimum deadline of one year for party affiliation, to be counted from the effective creation of the political party."
- TSE Case of 3-4-2008 in Writ of Mandamus (MS) n. 3,709: the minimum party affiliation deadline of one year shall be observed even in the event of organization of new elections as referred to in Article 224 of the Electoral Code (CE/65).
- See head provision of Article 9 of Law N. 9,504/1997.

Article 19. Each year, on the second week of April and October, political parties will rely on their respective steering bodies operating at the municipal, regional or national levels, to send to Electoral Judges, for filing and publishing purposes and with the aim of complying with party affiliation deadlines, notably with regard to candidacies to elective offices, a list comprising the names of their affiliates, the date of affiliation, the number of their voter's cards and their respective voting districts.

- Head provision as amended by Article 103 of Law N. 9,504/1997.
- TSE Resolution (RES) n. 19,989/1997: the list comprising political party affiliates shall be forwarded to the Electoral Justice on the 8th and 14th of April and October, during regular operating hours of local registries. TSE Resolutions (RES) nos. 20,793/2001; 20,874/2001; 21,061/2002; 21,709/2004; 21,936/2004; 22,164/2006.
- TSE Precedent (Súm.) n. 20/2000: "If a party forwards a list to the Electoral Justice pursuant to provisions set forth in Article 19 of Law N. 9,096 of 9-19-1995, but misses the name of one or more of its affiliates, such irregularity may be corrected by other proof of affiliation".
- TSE Case of 8-21-2008, in Special Electoral Appeal (REspe) n. 28,988: "The party affiliation form does not replace the list of party affiliates which must be forwarded by the political party to the Electoral Justice".

Paragraph 1. If the list is not forwarded within the deadlines referred to in this article, the affiliation of all voters listed in a previously sent record shall remain unchanged.

Paragraph 2. Those impaired by negligence or bad faith are entitled to require, directly to the Electoral Justice, the compliance with the provisions set forth in the head provision of this article.

- Disciplinary Board of the Electoral Justice (CGE) - Remedy (Prov.) n. 4/2005: "Establishes control procedures for the processing of special lists" that result from the provisions set forth herein.

Paragraph 3. The national steering bodies of political parties will be granted full access to information on their affiliates that have been recorded at the voter registry.

- Paragraph 3 as amended by Article 2 of Law N. 12,034/2009.
- TSE Resolution (RES) n. 21,538/2003, Article 29: regulates the access to the voter registry.

Article 20. With regard to candidacies to elective offices, political parties may establish, in their respective by-laws, party affiliation deadlines longer than the ones provided for in this Law.

Sole Paragraph. With regard to candidacies to elective offices, party affiliation deadlines established in the by-laws of political parties cannot be changed in the year of the election.

Article 21. An affiliate shall send a written notification to both the municipal steering body of the respective political party and the Electoral Judge of the voting district where s/he is registered at in order to leave the said party.

- TSE Resolution (RES) n. 23,117/2009, Article 13, Paragraph 5: in case the political party has no steering body operating at the municipal level or in case it is impossible to locate a competent party representative, the aforementioned notification may be sent only to the judge of the voting district where the affiliate is registered.

Sole Paragraph. The relationship ties between the affiliate and the political party will terminate after two days of the delivery of the aforementioned notification.

Article 22. The immediate cancellation of a party affiliation is accepted in the event of:

I – death;

II – loss of political rights;

III – expulsion;

IV – other situations provided for in a party’s by-laws, with mandatory notification to the interested party within forty-eight hours of the decision.

Sole Paragraph. The individual who joins another party shall notify his/her former party and the Judge of his/her respective voting district about it in order to have his/her former affiliation cancelled; in case s/he does not follow such procedures on the day after his/her new affiliation, s/he will give cause to double affiliation, *being both ties considered null and void for all intents and purposes.*

- Electoral Code (CE/65), Article 320.
- Federal Supreme Court (STF) case of 2-24-2005, in the Direct Action for the Declaration of Unconstitutionality (ADI) n. 1,465: constitutionality of the excerpt formatted in italics.
- Superior Electoral Court (TSE) case of 5-26-2009, in Interlocutory Appeal (AI) n. 10,745; of 2-5-2009, in Special Electoral Appeal (REspe) n. 32,726; of 10-17-2006, in Ordinary Appeal (RO) n. 1,195 and TSE Cases nos. 22,375/2004 and 22,132/2004: in case the candidate has notified both the Electoral Justice and the political party about his/her disaffiliation, and in case that happened before the forwarding of the lists referred to in Article 19 of Law N. 9,096/1995, it is not possible to consider it a case of double affiliation.
- TSE Case of 10-3-2006, in Special Electoral Appeal (REspe) n. 26,433: the purpose of this article is to prevent double affiliation from ruining the elections and not to provide the voter with more voting options.
- Disciplinary Board of the Electoral Justice (CGE) - Remedy (Prov.) n. 2/2010: “With regard to double party affiliation, appeals that were decided by electoral judges, will be subject, wherever applicable, to the provisions established in Articles 257 et seq. of the Electoral Code”.

CHAPTER V

ON PARTY LOYALTY AND DISCIPLINE

Article 23. The responsibility for the violation of party duties shall be investigated and punished by the competent body, pursuant to the provisions established in the by-laws of each political party.

Paragraph 1. No party affiliate shall be subject to disciplinary measures or penalties for carrying out actions that are not defined as offenses in the by-laws of their respective political party.

Paragraph 2. Accused individuals shall enjoy from broad defense counsel rights.

Article 24. At the Legislative House, the member of a party bench shall subject his/her parliamentary actions to doctrine and programmatic principles established by the steering bodies of his/her party, pursuant to the provisions set forth in the party's by-laws.

Article 25. The by-laws of political parties may establish, in addition to basic disciplinary measures of party nature, regulations on penalties applicable to representatives who oppose, by attitude or vote, to the guidelines legally established by institutional bodies of their respective parties, including the temporary termination of their participation in a party bench, the suspension of voting rights in internal meetings or the loss of all prerogatives, offices and functions that they may exercise because of party representation and proportion at the respective Legislative House.

Article 26. Representatives who leave the party with which they were elected shall automatically lose the function or office exercised at the respective Legislative House because of party proportion.

- TSE Resolution (RES) n. 22,526/2007: political parties and party coalitions shall keep the right to seats obtained through the proportional system unchanged in case an elected candidate requests the cancellation of their affiliation or joins a different party. TSE Resolutions (RES) nos. 22,563/2007 and 22,580/2007: seats are also kept in case the candidate joins a party that is member of the coalition with which s/he was elected. TSE Resolution (RES) n. 22,600/2007: judgment applicable to seats obtained through the majority system.
- TSE Resolution (RES) n. 22,610/2007: regulation of cases of loss of elective office and of justification for party disaffiliation.
- Federal Supreme Court (STF) case of 11-12-2008, in the Direct Actions for the Declaration of Unconstitutionality (ADIs) nos. 3,999 and 4,086 and TSE Case of 10-11-2008, in Action for a Provisional Remedy (AC) n. 2,424: constitutionality of the aforementioned resolution.

CHAPTER VI

ON THE MERGER, INCORPORATION AND TERMINATION OF POLITICAL PARTIES

Article 27. A party that is terminated; incorporated; or merged with another, pursuant to the provisions established in its by-laws, will have its registration at the Civil Registry and the Superior Electoral Court cancelled.

Article 28. After the matter is adjudged, the Superior Electoral Court orders the cancellation of the civil registration and of the by-laws of a party that:

I – received or is receiving financial funds of foreign origin;

II – is subordinated to a foreign entity or government;

III – has not rendered accounts to the Electoral Justice pursuant to the provisions established in this Law;

- TSE Resolution (RES) n. 20,679/2000: a political party will not be cancelled if its regional or municipal bodies did not render accounts.

IV – runs a paramilitary organization.

Paragraph 1. The legal decision referred to in this Article shall be preceded by due process, with broad defense counsel rights.

Paragraph 2. Cancellation procedures are initiated by the Court in case of complaints filed by any voter, party representative or the General Electoral Attorney.

Paragraph 3. A political party shall not be subject to, in the national level, the suspension of its shares of the Party Fund nor to any other penalty because of actions carried out by its regional or municipal institutional bodies.

- Paragraph as amended by Article 2 of Law N. 9,693/1998.
- TSE Resolution (RES) n. 22,090/2005: regional or municipal party organization which benefits directly from actions prohibited in Article 73 of Law N. 9,504/1997 will be excluded from the distribution of funds that result from the application of fines set forth in the said Law, being such amounts withdrawn from the national party organization and institutional bodies established at subsequently lower levels, so as to reach the institutional body of the party which is effectively accountable for such practices.

Paragraph 4. Expenditures of party bodies at the municipal or state level as well as expenditures of majority candidates in their respective jurisdictions shall be paid exclusively by the corresponding party organization, except in case of express agreement made with other institutional body of the same party.

- Paragraph 4 as amended by Article 2 of Law N. 12,034/2009.

Paragraph 5. In case expenditures are not paid, they may be legally collected from higher bodies of the political parties, being the party body which made such expenditure subject to levy of execution.

- Paragraph 5 as amended by Article 2 of Law N. 12,034/2009.

Paragraph 6. The provisions set forth in item III of the head provision solely refer to the national bodies of political parties which do not render accounts to the Superior Electoral Court; and, in the event of omission of regional and municipal institutional bodies of a certain political party, neither the civil registration nor the by-laws of the said party shall be subject to cancellation.

- Paragraph 6 as amended by Article 2 of Law N. 12,034/2009.

Article 29. Two or more parties may merge into one or incorporate one another based on decision issued by their national decision-making bodies.

Paragraph 1. With regard to party merger, the following regulations shall apply:

I – steering bodies of the involved political parties will prepare common by-laws and program projects;

II – national decision-making bodies of parties which are in the middle of a merger process shall vote on the projects in a joint meeting, by absolute majority, and shall elect the national steering body entitled to register the new party.

Paragraph 2. With regard to party incorporation, according to civil law provisions, the national decision-making body of a party that incorporated another shall deliberate on the adoption of the by-laws and the program of the incorporated party.

Paragraph 3. After passing the by-laws and the program of a party that incorporated another, national decision-making bodies shall organize a joint meeting to elect the new national steering body.

Paragraph 4. In the event of party merger, the legal personality of the new party will begin with the recording of an entry at the competent Civil Registry of the Federal Capital, registering party's by-laws and program, attached to minutes of decisions issued by competent bodies.

Paragraph 5. In the event of party incorporation, the respective instrument shall be recorded at the competent Civil Registry which shall then cancel the registration of the party which has been incorporated to another one.

Paragraph 6. In the event of party merger or incorporation, the votes cast to these parties in the last general election for the Chamber of Deputies (House of Representatives) shall be added together for the purposes of *parliamentary operation, pursuant to the provisions set forth in Article 13*, of distribution of shares of Party Fund and of free access to radio and television networks.

- See first annotation to Article 13 of this Law.
- TSE Resolution (RES) n. 22,592/2007: a party that incorporates another is entitled to access the Party Fund amounts due to the incorporated party even before the registration of the said incorporation at the TSE.

Paragraph 7. The new by-laws or the incorporation instrument shall be registered and recorded at the Civil Registry and the Superior Electoral Court, respectively.

SECTION III

PARTY FINANCE AND ACCOUNTING

CHAPTER I

ACCOUNTABILITY

- TSE Res. 21,841/2004, as amended by TSE Resolutions 22,067/2005 and 22,655/2007: "Disciplines the accountability of political parties and the Special Rendering of Accounts".
- TSE/SRF Joint Ordinance 74/2006: "Establishes provisions for the exchange of information between the Superior Electoral Court (TSE) and the Secretariat of Federal Revenue of Brazil (SRF) and other measures", including information regarding the rendering of accounts by candidates and financial committees of political parties (Article 1, *caput*) and the annual rendering of accounts by

political parties (Article 1, paragraph 1); establishes the possibility for any citizen to file a complaint to the SRF regarding the misuse of resources, financial and otherwise, during election campaigns or political party activities (Article 2), the verification of possible unlawful tax-related activity (Article 3) and the reporting to the TSE of any detected tax offense detected (Article 4, *caput*) and the provisions of Articles 23, 27 and 81 of Lei 9,504/1997 (Article 4, sole paragraph).

- TSE Res. 22,654/2007: inexistence of deadline for the Electoral Courts to judge the accounts rendered by political parties.

Article 30. A political party shall, through its national, regional and local bodies, maintain accounting records so as to make it possible to know the source of its income and the allocation of its expenses.

Article 31. A political party may not receive contributions, monetary aid or any form of aid with value in currency, be it directly or indirectly or in any form or guise, including through advertising of any kind, if such contributions or aid originate from:

- Lei 9,504/1997, Article 24: donations forbidden for parties and candidates for election campaigns.

I - foreign entities or governments;

- FC/88, Article 17, II.

II - public *authorities* or agencies, except for the allocations referred to in Article 38;

- TSE Res. No. 21,841/2004, Article 5, paragraph 1: the prohibition does not reach political agents and civil servants affiliated to political parties invested in offices, functions, mandates or commissions due to nomination, election, appointment or delegation to the exercise of constitutional powers. See, however, TSE Res. No. 22,025/2005: "[...] The prohibition of item II, Article 31 of Lei 9,096/1995 is valid for contributions by individuals holding "cargo de confiança" or "função de confiança" positions (positions of trust for Brazilian civil service), calculated as a percentage of remuneration received and collected by the party as a payroll discount. See, also, TSE Res No. 23,077/2009: establishes criteria for contributions in compliance with TSE Res No. 22,585/2007, which establishes a prohibition to make contributions for holders of office with *ad nutum* dismissible positions bearing condition of authority.

III - self-regulated public bodies, public companies or utilities, joint stock companies and *foundations established in law* and whose resources include funds from governmental bodies or agencies;

- TSE Res. 21,841/2004, Article 5, paragraph 2: "The foundations mentioned in section III include policy education/indoctrination and research institutes or foundations pursuant to Article 44, item IV, Lei 9,096/1995". See, however, TSE Dec of 9.FEB.2006 in Special Res. 25,559: "The contents of item III of Article 31 of Lei 9,096/1995, regarding foundations, must be observed considering foundations of public nature".
- See notes to Article 24, item III, of Lei 9,504/1997.

IV - professional associations or trade unions.

Article 32. Political parties are required to annually submit to the Electoral Courts the accounting statements for the last fiscal year no later than April 30 of the following year.

Paragraph 1 The accounting statements of the national body shall be submitted to the Superior Electoral Courts, those of the *state agencies to the Regional Electoral Courts* and those of the municipal bodies to the Electoral Judges.

- TSE Dec. of 8.MAY.2007 in Special Res. 27,934: jurisdiction of the regional electoral courts to judge the rendering of accounts of political party regional directories.

Paragraph 2 The Electoral Courts hereby determines the immediate publication of the accounting statements in the official press, and, where it does not exist, its affixation to the Electoral Registry Office.

Paragraph 3 In elections years, the parties must submit monthly accounting statements to the Electoral Courts during the four months preceding the election and the two months subsequent to it.

- See Article 3, item III of TSE Res. 21,841/2004.

Article 33. The accounting statements shall contain, among others, the following:

I - discrimination of values and allocation of funds from the Party Fund;

II - origin and amount of contributions and donations;

III - expenditures of electoral nature, with specification and proof of spending with radio and television shows, committees, advertising, publications, rallies and other campaign activities;

IV - detailed breakdown of revenue and expenditures.

Article 34. The Electoral Courts shall exercise supervision over the bookkeeping and accountability of the party and of campaign expenses, and shall certify whether such adequately reflect the actual financial transactions, expenditures and resources used in election campaigns, requiring compliance with the following:

- See notes at the beginning of this chapter.

I - mandatory establishment of committees and appointment of specific party leaders to transact funds during election campaigns;

- Lei 9,504/1997, Article 19: deadline for establishment of committees; Article 20: financial administration of the election campaign made by the candidate himself.
- TSE/RFB Joint Normative Inst. 1,019/2010: "Provides for acts before the National Registry of Legal Entities (CNPJ), the finance committees of political parties and candidates for elected office, including deputies and alternates".

II - characterization of the responsibility of the party leaders and committees, including the Treasurer, who shall be answerable, civilly and criminally, for any irregularities;

III - bookkeeping, with documentation supporting the inflow and outflow of money or property received and invested;

- TSE Ordinance 521/2011, which provides for the production of effects, in its Article 3, "as of the 2012 fiscal year".

IV - obligation of the party to keep supporting documentation of its rendering of accounts for a period of not less than five years;

V - requirement of accountability by the political party, its committees and candidates at the end of the election campaign, with immediate payment to the party's treasure of any outstanding financial balances which may be detected.

- Lei 9,504/1997, Article 31: leftover campaign funds.

Sole paragraph. To perform the verifications required to meet the provisions of the *caput*, The Electoral Courts may request the assistance of technical staff from the Superior Court of Audit or the State Courts of Audit for as long as necessary.

Article 35. The Superior Electoral Court and the Regional Electoral Courts shall, upon receipt of a well-grounded complaint by an affiliated member or Delegate from a Party, a representation by the Federal Attorney General or Regional Attorney General or by initiative of the Inspector, determine the examination of a party's bookkeeping and the investigation of any acts that violate statutory or legal requirements to which its members or affiliates are subject in financial matters, and may also determine the financial disclosure of the accounts of the parties for clarification or verification of the facts relating to the complaint.

- TSE/SRF Joint Ordinance 74/2006, Articles 2, 3 and 4: possibility for any citizen to file a complaint to the Federal Revenue of Brazil regarding the misuse of resources, financial and otherwise, during election campaigns or political party activities; the verification of possible unlawful tax-related activity and reporting to the TSE of any tax offenses detected; and the provisions of Articles 23, 27 and 81 of Law 9,504/1997.
- TSE Dec. of 14.AUG.2007 in Special Res. 27,858: "[...] No appeal is provided for acts of Regional Electoral Courts which, due to representation by the Electoral Prosecutor's Office grounding in Articles 35 of Law 9,096/1995 and 25 of TSE Res. 21,841/2004, determine the conduction of an extraordinary audit of the accounts of a political party".

Sole paragraph. A political party may, through the Electoral Courts, examine the monthly or annual accounts rendered by other parties fifteen days after the publication of their balance sheets, with five days to challenge such accounts, and may also report facts, indicate evidence and request the opening of an investigation into any act that violates the legal or statutory provisions to which the parties and their affiliates are subject in financial matters.

- TSE Dec. of 11.APR.2006 in RMS 426: the present provisions apply solely to the rendering of the accounts of political parties, while the rendering of accounts for electoral campaigns are governed by Articles 28 and subsequent of Lei 9,504/1997.

Article 36. In case a breach of legal or statutory nature is verified, the party involved shall be subject to the following penalties:

I - for resources of unmentioned or unclarified origin, the receiving of funds from the Party Fund shall be suspended until clarification be accepted by the Electoral Court;

II - in the case of receipts of funds mentioned in Article 31, participation in the Party Fund shall be suspended for a year;

III - in the case of receipt of donations whose amount exceeds the limits provided in *Article 39, paragraph 4*, participation in the Party Fund shall be suspended for two years and a fine shall be levied against the party equal to the amount that exceeds the limits defined.

- The above-mentioned paragraph 4 was repealed by Article 107 of Lei 9,504/1997.

Article 37. Failure to render accounts or total or partial rejection of rendered accounts shall lead to suspension of new shares from the Party Fund and subject those responsible to the penalties of law.

- *Caput*, as amended by Article 3 of Lei 9,693/1998.
- Law 9,504/1997, Article 25: loss of the right to receive shares from the Party Fund on the subsequent year for parties that fail to comply with the rules regarding the collection and use of resources defined by law.
- TSE Dec. of 7.FEB.2012 in CTA No. 172195: ineligibility for the national directory to collect the percentage of their shares of the Party Fund for foundation purposes suspended by Electoral Justice decision.

Paragraph 1 The Electoral Courts may due diligence in order to complement information or resolve irregularities found in the accounts rendered by party leaderships or candidates.

- Sole paragraph's original writing renumbered to paragraph 1 of Article 3 of Lei 9,693/1998.

Paragraph 2 The sanction referred to in the *caput* shall apply exclusively to the party level responsible for the irregularity.

- Paragraph added by Article 3 of Lei 9,693/1998, with the sole paragraph being renumbered as paragraph 1.
- TSE Res. 21,841/2004, Article 29: procedures in case of suspension of shares from the Party Fund. TSE Res. 21,797/2004: it shall be the obligation of the national directory, on communication is received, to stop transferring the respective shares of the Party Fund owed the regional directory, regardless of special rendering of accounts. TSE Res. 22,626/2007: "The suspension of transfers of amounts from the Party Fund by the national directory to the regional entity shall occur after the publication of the regional decision rejecting the aforementioned rendering of accounts".
- See second note to Article 28, paragraph 3, of this law.
- See Article 15-A of this law.

Paragraph 3 The suspension of transfers of new shares from the Party Fund due to total or partial rejection of accounts rendered by parties shall be *applied in a proportionate and reasonable manner* for a period of one (1) month to twelve (12) months, or through discount of the amount to be transferred from the amount identified as irregular; a penalty of suspension may not be levied if the accounts rendered are not judged by the competent court or jurisdiction *within five (5) years of their submission*.

- 3rd Paragraph added by Article 2 of Law 12,034/2009.
- TSE Dec. of 15.SEP.2010, in Pet. # 1,680: the severity of the irregularities found in the accounts rendered must be taken into account.
- TSE Dec. of 8.FEB.2011, in Pet. # 1,628: the deadline in this Article shall be counted only as of the date of publication and enactment of Law 12,034/2009, with no retroactive enforcement; TSE Dec. of 13.APR.2011 in ED-Pet No 1,628: application of the deadline in this paragraph to accounts rendering proceedings pending trial, counted as of the enactment of the new law.
- Lei 9,504/1997, Article 25, sole paragraph: similar device for accounts rendering by candidates.
- TSE Dec. of 18.NOV.2010 for Request for Reconsideration made on Pet. 2,664: non-applicability of delivery of quotes to a political party that has had its accounts rejected and therefore has not participated in the split of shares from the Party Fund.

Paragraph 4 The decision to disallow all or part of the accounts rendered by party institutions may be appealed to the Regional Electoral Courts or the Superior Electoral Court, as appropriate, and such appeal shall be received with suspensive effect.

- Paragraph 4 added by Article 2 of Law 12,034/2009.
- TSE Dec. of 6.MAR.2012 in AgR-RO 2834855: non-applicability of ordinary appeal in accounts rendering proceedings originally reviewed by a Regional Electoral Court due to lack of legal provision.
- TSE Dec. of 21.JUN.2011 in ED-Pet No 1458: immediately execution, upon publication, of decision by the TSE that rejects accounts rendered.

Paragraph 5 The rendering of accounts rejected by the Regional Courts and the Supreme Court may be reviewed for purposes of proportional application of sanction upon request for that end stated in the records of the accounts rendered.

- Paragraph 5 added by Article 2 of Law 12,034/2009.
- TSE Dec. of 30.MAR.2010 in AgR-Pet 1,616: retroactivity of the provisions in this paragraph as described in Law 12,034/2009.

Paragraph 6 The examination of the accounts rendered by party institutions has jurisdictional nature.

- Paragraph 6 added by Article 2 of Law 12,034/2009.

CHAPTER II

THE PARTY FUND

- TSE Res. 21,875/2004: "Regulates the collection of percentage-based Party Fund shares from policy education/indoctrination and research institutes or foundations." TSE Res. 21,975/2004: "Disciplines the collection of fines provided for in the Electoral Code and related laws and the distribution of funds from the Special Fund for Financial Assistance to Political Parties (Party Fund)", TSE Ordinance 288/2005: "Establishes standards and procedures for the payment and collection of fines provided for in the Electoral Code and related laws and the use of the Union Collection Guide (GRU)", and TSE Res. 21,841/2004, as amended by TSE Resolutions 22,067/2005 and 22,655/2007: "Disciplines the accountability of political parties and the Special Rendering of Accounts".
- TSE Dec. of 1.AUG.2011 in Pet. 409436: in cases of judicial attachment, it is not a prerogative of the TSE to block the receipt of Party Fund shares or to provide the bank account number of a political party.
- TSE Res. 23,126/2009: "The proceeds from unidentified sources are part of the Party Fund, and shall be collected through the Union Collection Guide (GRU), as per TSE Resolution 21,975/2004 and TSE Ordinance 288/2005."

Article 38. The Special Fund for Financial Assistance to Political Parties (Party Fund) shall be funded by:

- TSE Res. 23,126/2009: funds received by political parties come from unidentified sources must be collected by the Party Fund through Union Collection Guides(GRU) , as per TSE Res. 21,975/2004 and TSE Ordinance 288/2005.

I - monetary fines and penalties imposed pursuant to the Electoral Code and related laws;

- TSE Dec. of 1.MAR.2011 in Special Res. 28,478: impossibility to request reversal of the fine in favor of the State Fund for Reparation of Diffuse Rights.

II - financial resources allocated to it by law on permanent or temporary fashion;

III - donations from individuals or entities made through bank deposits made directly into the account of the Party Fund;

IV - appropriations from the Union budget, in amount never inferior, for each year, to the number of registered voters as of December 31 of the year preceding the budget proposal, multiplied by thirty-five cents of real in August 1995 rates.

Paragraph 1 (Vetoed.)

Paragraph 2 (Vetoed.)

Article 39. Except for the provisions of Article 31, a political party may receive donations from individuals and legal entities to set up their funds.

- TSE Res. 23,086/2009: "A party may receive donations from individuals or legal entities to fund intra-party advertising, as well as for the realization of the primaries of said party [...]". Restrictions, however, exist regarding candidates for elected positions.

Paragraph 1 The donations provided for in this article may be made directly to the national, state and local party leaderships, who shall provide the Electoral Courts and the hierarchically superior bodies of the party with a statement of their receipt and the allocation thereof, together with the accounting statement.

Paragraph 2 Other donations, whatever their nature, shall be included in the party's accounting, with values defined in currency.

Paragraph 3 Monetary donations shall be made via crossed check in the name of the political party or via bank deposit directly into the account of the political party.

- TSE Dec. of 6.MAR.2012 in AgR No. 2834940: the lack of an open checking account and the receipt of funds without identification of the donor are vices that impact transparency and undermine the oversight of accountability.

Paragraph 4 (Repealed by Article 107 of Lei 9,504/1997.)

Paragraph 5 In an election year, political parties may apply or distribute the financial resources received from individuals and legal entities through the various elections, observing the provisions of paragraph 1 of Article 23, Article 24 and paragraph 1 of Article 81 of Law No. 9,504 of September 30, 1997, as well as the criteria defined by their respective management bodies and statutory norms.

- Paragraph 5 added by Article 2 of Law 12,034/2009.
- See note in the *caput* of this Article.

Article 40. The budgetary provision of funds to the Party Fund shall be allocated, in the Annex of the Judiciary Power, towards the Superior Electoral Court.

Paragraph 1 The National Treasury shall deposit the monthly apportionments from the Fund in the Bank of Brazil in a special account made available to the Superior Electoral Court.

Paragraph 2 The same special account shall receive the deposits of the amounts collected through fines and other monetary penalties provided for in electoral legislation.

Article 41. The Superior Electoral Court shall, within five days from the date of the deposit referred to in Paragraph 1 of the preceding Article, effect its distribution to the national parties *according to the following criteria*:

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: declares the highlighted words unconstitutional.
- See Article 41-A of this Law, added by Law 11,459/2007: establishes criteria for distribution of shares from the Party Fund.
- See second note to Article 28, paragraph 3, of this law.

I - one percent of the total amounts of the Party Fund shall be separated for distribution, in equal shares, to all parties who have registered their statutes in the Superior Electoral Court;

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: declares this item unconstitutional.

- See second note in the *caput* of this Article.

II - ninety-nine percent of the total amounts of the Party Fund shall be distributed to parties who have fulfilled the conditions of Article 13, at the proportion of the votes obtained in the last general election for the Chamber of Deputies.

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: declares this item unconstitutional.
- See second note in the *caput* of this Article.

Article 41-A. Five percent (5%) of the total amounts of the Party Fund shall be separated for distribution, in equal shares, to all parties who have registered their statutes in the Superior Electoral Court, and ninety five percent (95%) of the total amounts of the Party Fund shall be distributed to them at the proportion of the votes obtained in the last general election for the Chamber of Deputies.

- Article added by Article 1 of Law 11,459/2007.

Article 42. In case of cancellation or extinction of the national leadership body of the party, the share that would be allocated to that body shall revert to the Party Fund.

Article 43. Deposits and transfers of funds from the Party Fund shall be made through banking institutions controlled by the Federal Government, the State Government or, lacking these, by the bank selected by the governing body of the party.

Article 44. The proceeds from the Party Fund shall be applied for:

I - *office maintenance and services rendered by the party*, including the payment of staff in any capacity, observing, for the latter, the maximum limit of 50% (fifty percent) of the total amounts received;

- Item I as amended by Article 2 of Law 12,034/2009.
- TSE Dec. of 30.MAR.2010, in Pet. # 1,831: exclusion of the payment of interest and fines from the expenditures authorized by this item.
- TSE Res. 21,837/2004: possibility of utilizing Party Fund resources for the acquisition of movable assets, computers, printers, *software* and automotive vehicles.
- TSE Res. 22,224/2006: political parties may not cover or account in favor of their national directory expenditures with payment of staff from the state directories made with funds from the Party Fund.
- TSE Res. 23,086/2009: the allocation of funds from the Party Fund under this item extends to similar expenditures incurred by the political party for intraparty advertising (primaries).
- TSE Dec. of 30.MAR.2010 in AgR-RMS 712: "Non-compliance with this rule by itself does not entail automatic rejection of accounts of a political party association, especially when the non-existence of ill purpose or negligence is demonstrated."

II - for doctrinal and political advertising;

III - for recruitment and election campaigns;

IV - for the creation and maintenance of or policy education/indoctrination and research institutes or foundations. This item shall receive at least twenty percent of the total amounts received;

- See first note to Article 53 of this Law.
- TSE Res. 21,875/2004: "Regulates the collection of percentage-based Party Fund shares from policy education/indoctrination and research institutes or foundations."
- TSE Res. 22,226/2006: "The foundations created shall be constituted in the form of legal entity of private law (Article 1 of TSE Res. 22121, of 9.DEC.2005)"; the implementation of programs to disseminate the party programmatic line is an *interna corporis* matter of political parties.
- See third note to Article 37 (*caput*) of this Law.

V - for the creation and maintenance of programs for the promotion and dissemination of women's political participation as a percentage to be determined by the national party leadership, observing a minimum of 5% (five percent) of the total.

- Item V added by Article 2 of Law 12,034/2009.
- See Article 45 of this Law.

Paragraph 1 The rendering of accounts made by the party leadership at any level shall explicitly indicate the expenditures made with Party Fund resources so as to allow the Electoral Courts to verify compliance with the provisions of sections I and IV of this Article.

Paragraph 2 The Electoral Courts may, at any time, investigate the application of funds coming from the Party Fund.

- See second note to Article 35 (*caput*) of this Law.

§ 3 The funds mentioned in this Article are not subject to the regime of Law 8,666 of June 21, 1993.

- Paragraph added by Article 104 of Lei 9,504/1997.

Paragraph 4 Charges and taxes of any kind are not included in the calculation of the percentage referred to in Paragraph I of this article.

- Paragraph 4 added by Article 2 of Law 12,034/2009.

Paragraph 5 The party that does not comply with provisions of item V of the *caput* of this Article shall, in subsequent year, add two point five percent (2.5%) of its proceeds from the Party Fund for that purpose, and may not use that apportionment for any other end.

- Paragraph 5 added by Article 2 of Law 12,034/2009.

TITLE IV

FREE ACCESS TO RADIO AND TELEVISION

- TSE Res. 20,034/1997, as amended by TSE Res. 20086/1997, 20400/1998, 20479/1999, 20822/2001, 20849/2001, 22503/2006 and 22696/2008: instructions for free access to radio and television by political parties.

- TSE Res. 21,983/2005: possibility of producing party advertising through print media or billboards.
- TSE Res. 23,086/2009, which provides for intraparty advertising (primaries) for the selection of candidates for the convention: "[...] The publicity of the primaries may not constitute early electoral advertising, for which reason it is limited solely to opinion polling within the party. 1. The publicity of primaries via the Internet goes beyond the inner boundary of the party, and therefore compromises the surveillance by the Electoral Courts of its reach. 2. In light of the constraint that publicity of the primaries cannot exceed the scope of intra-party activity, electronic messages are allowed only to members of the party. 3. Pursuant to Article 36, Paragraph 3 of Lei 9,504/1997, which can be extended by analogy to the primaries, does not prohibit the use of banners and posters to perform intra-party advertising since those are placed in a location near that where the primaries are to take place and bear messages to the affiliated members. [...] 4. [...] the preparation of pamphlets for distribution to party members within the limits of the party, is not, by itself, prohibited by electoral law. [...] 5. Just as electronic messaging, the sending of letters as a way of intraparty advertising is allowed during the primaries since these are directed exclusively to the members of the party. 6. The authorization of paid publicity in the media is inconceivable, since it goes, or may go, beyond the scope of the party and, therefore, reach the whole community [...]"

Article 45. Free political party publicity, be it live or recorded, transmitted via radio and television broadcast, shall be held between seven thirty PM and ten PM, exclusively with the purpose of:

- Lei 9,504/1997, Article 36, Paragraph 2 : Prohibition of free political party publicity in the second half of the election year.

I - disseminating party programs;

II - transmitting messages to members on the implementation of the party program, the events related to it and the congress activities of the party;

- See third note in Paragraph 3 of this Article.

III - publicizing the party's position on political and community issues;

IV - promoting and disseminating women's political participation, devoting to them the percentage of time determined by the national party leadership, observing a minimum of ten percent (10%).

- Item IV added by Article 2 of Law 12,034/2009.
- See Article 44 of this Law.

Paragraph 1 The following are prohibited in the broadcasts which this Title regulates:

- TSE Dec. of 8.MAR.2007 in Rp. # 862: possibility of identifying the political party through shadowing of the logo (watermark).

I - participation of party member that is not the person responsible for that particular broadcast;

II - dissemination of publicity for candidates for elected office and defense of personal interests or those of other parties;

III - use incorrect or incomplete scenes or imagery, effects or any other features that distort facts or their communication.

- TSE Dec. of 30.MAR.2006 in Rp. # 782: characterization of misuse even if no image superimposition or other forms of edition are used.

Paragraph 2 The party who contravenes the provisions of this article shall be punished as follows:

- Item I as amended by Article 2 of Law 12,034/2009.
- TSE Dec. of 30.MAY.2006, in Rps 902, 906 and 907: "The validity of the non-compliance shall lead to the loss of the space that would be presumably be occupied by the advertising film had it not been forbidden by the injunction, as well as a forfeiture by the party of its rights to any inserts it would be entitled to on the following semester [...]"
- TSE Dec. of 8.MAR.2007, in Rp. # 888: "Lack of identifying elements of the party is not, by itself, grounds for the imposition of the penalty of losing the right to broadcast on the following semester determined in Article 45, Paragraph 2, of Lei 9,096/1995, applicable only to political parties who do not comply with the provisions of the above-mentioned norm".
- TSE Res. No. 20744/2000 and TSE Dec. 1176/2000, 657/2003 and 683/2004: appropriateness of the request for right of reply to political party advertising based on Article 5, V, of the FC/88.
- TSE Dec. of 12.MAY.2011 in R-Rp 222623: competence of assistant judges to rule electoral representations filed due to early electioneering when there is no objective overlapping with the penalties determined for misrepresentation in party advertising. TSE Dec. of 25.APR.2012, in Rp. # 114624; TSE Dec. of 18.DEC.2007, in Rp. # 997; 30.OCT.2007, in Rp # 944: "Competence of the Inspector-General to review claims that involve the use of broadcast space allocated to the party program for extemporaneous electioneering in case of objective overlapping, with the possible dual tests from the perspective of Act No. 9,096/1995 and 9,504/1997".

I - when the infraction occurs in a broadcast with segments, the cancellation of the right to broadcast the following semester;

- Item I added by Article 2 of Law 12,034/2009.
- TSE Dec. of 24.JUN.2010, in Rp. # 107182: the penalty in the case of this item is limited to the total time allotted to advertising in a broadcast chain.

II - when the non-compliance takes place during the transmission of inserts, with the forfeiture of broadcast time equivalent to five (5) times the duration of the unlawful insertion in the following semester.

- Item II added by Article 2 of Law 12,034/2009.
- TSE Dec. of 24.JUN.2010, in Rp. # 107182: the penalty for the use of insertions during political party advertising for other purposes than what has been

intended shall be limited to the forfeiture of broadcast time equivalent to five times the duration of the insertion being contested, and may not be defined by multiplying it by the number of inserts of the same ad deemed illegal on the same data.

Paragraph 3 The representation against free political advertising, which *can only be filed by a political party*, shall be judged by the Superior Electoral Court in the case of the nationwide segments or inserts, and by the Regional Electoral Courts when dealing with programs segments or insertions restricted to their corresponding areas.

- Item I as amended by Article 2 of Law 12,034/2009.
- TSE Res. 20,034/1997, Article 13, edited on the validity of the original wording of Paragraph 2: other cases of legitimacy. TSE Res. 21,078/2002 and TSE Dec. No. 678/2004: legitimacy of copyright holders to make representations to Electoral Courts in order to curb illegal practices during the free political or party publicity slots.
- TSE Dec., of 5.APR.2011 in R-Rp No. 189711 and TSE Dec., of 10.AUG.2010 in R-Rp 177413: legitimacy of notorious pre-candidate to appear as claimed party in a representation for early electioneering during political-party broadcast.
- See note to Article 46.
- TSE Dec. of 25.APR.2012 in Special Res. 189348: active legitimacy of the Electoral Public Ministry ("Electoral Prosecutor's Office).
- TSE Dec. of 9.AUG.2011, in Rp. # 124931: illegitimacy of a regional body from a political party to file a representation to due to breach of the rules governing party advertising authorized by the TSE.

Paragraph 4 The deadline for the offer of representations closes on the last day of the semester in which the contested broadcast is aired, or, if it has been broadcast in the last thirty (30) days of that period, until the 15th (fifteenth) day of the following semester.

- Paragraph 4 added by Article 2 of Law 12,034/2009.

Paragraph 5 Decisions by the Regional Electoral Courts that uphold representations that revoke a party's right to broadcast its advertising shall be appealable to the Superior Electoral Court, and such appeal shall be received with suspensive effect.

- Paragraph 5 added by Article 2 of Law 12,034/2009.
- TSE Dec. of 7.DEC.2011 in AgR-AC 143095: the intention to file a suspensive effect appeal (as described in this paragraph) shall be directed, at the TSE level, as a response to the regional decision that upheld the representation, and not to the records of the original request for broadcasting of party advertising.

Paragraph 6 Party advertising, be it on radio or television, shall be restricted to the free broadcasting times determined in this. No paid advertisement shall be allowed

- Paragraph 6 added by Article 2 of Law 12,034/2009. Corresponds to Paragraph 3 of the original wording.

- TSE Res. No. 21,705/2004, given under the previous wording of Paragraph 3, of the same content: this provision includes programs focused on political indoctrination and education produced by a foundation established by a political party; the prohibiting of paid advertising extends to cable or satellite subscription television channels.

Article 46. Radio and television stations are required to perform free broadcasts at the national and state levels for the political parties, as described in this Law, by initiative and under the responsibility of their management bodies.

- TSE Decs. 370/2002 and 236/2003, among others: define a new broadcast date for cases where the original broadcast has not been conducted due to technical failure by the TV or radio station broadcasting it. TSE Dec. 690/2004: no right of fiscal compensation for the broadcaster in these circumstances.
- TSE Res. 23,010/2009: impossibility of changing the time of broadcast of party advertising segments in only one state.
- Monocratic Dec. from 2.SEP.2009, in PP 14: impossibility of broadcasting political party publicity on national television with different content for each state.

Paragraph 1 The broadcasts shall occur through segments in national or *state* network chains and through inserts lasting between thirty-second and a minute during intermission from regular programming.

- TSE Dec. of 20.MAR.2007 in Rcl 380 of 22.MAR.2007, in Rps 800 and 863 of 10.APR.2007, in Rp 859, and Dec. 26.APR.2007 in Rp 861: with the amendment of TSE Res. 22,503/2006, broadcasting spaces for the dissemination of party publicity in regional chains were extinguished.

Paragraph 2 The formation of broadcast chains, both national and *state*, requires authorization by the Superior Electoral Court, which will request the necessary slots to the radio and television stations by request of the national bodies of the parties with at least fifteen days' notice.

- See note to the preceding paragraph.
- TSE Res. 20,034/1997, Article 5, as amended by TSE Res. 20,479/1999: deadline until December 1 of the year prior to that of transmission for the parties to request the formation of broadcast chains. TSE Dec. 2,175/2000: legitimacy of fixating the aforementioned timeframe in face of the TSE's competence to regulate the faithful execution of the law, with no encroachment of rights.

Paragraph 3 When making the request referred to in the preceding Paragraph, the party body shall also request the setting of dates for the formation of national and *state* broadcast chains.

- See note in the caput of this Article.

Paragraph 4 In case of coincidence of dates, the Superior Electoral Court shall, regardless of national or *state* broadcast, give priority to the party who submitted the application first.

- See note in the caput of this Article.

Paragraph 5 Magnetic tapes with the recordings of the segments or inserts shall be delivered to the stations at *least twelve hours* before the broadcast.

- TSE Res. 20,034/1997, Article 7: delivery of magnetic tapes 24 hours in advance. In repealed TSE Res. 19,586/1996 the 12-hour period was repealed; however, Article 6 establishes the a party's obligation to indicate the time frame that would be used to allow for the reorganization of the station's programming in case the entire time reserved was not utilized.
- TSE Res. 21,381/2003 and TSE Dec. of 8.MAR.2007 in Rp # 893: inexistence of legal requirement for the parties to deliver uniform or analogous material for party advertising made through inserts, both national and state (regional chain broadcasts were extinguished by TSE Res. 22,503/2006).

Paragraph 6 The inserts to be made in the programming of the stations shall be determined:

I - by the Superior Electoral Court when requested by a body of the national leadership of the party;

II - by the Regional Electoral Court when requested by a body of the state leadership of the party.

Paragraph 7 Each network shall only receive up to ten thirty-second or five one-minute inserts per day.

Article 47. To expedite proceedings, special conditions may be agreed directly between the radio and television and the party leadership bodies, if in observance of the limits established by this Law and with communication of the fact to the Electoral Court of the respective jurisdiction.

Article 48. Parties registered with the Electoral Superior Court that fail to meet the requirements of Article 13 are hereby assured the guarantee of conducting one broadcast in national chain with a duration of 2 minutes.

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: declares this Article unconstitutional.

Article 49. Parties *who meet the requirements of Article 13* are hereby assured the following:

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: declares the highlighted words unconstitutional, with reduction of the wording.
- Lei 9,259/1996, Article 4: immediate effectiveness of the provisions in this Article.

I - conducting one broadcast on national chain and one broadcast on *state chain* each semester, lasting twenty minutes each;

- TSE Dec. of 20.MAR.2007 in Rcl 380 of 22.MAR.2007, in Rps 800 and 863 of 10.APR.2007, in Rp 859, and Dec. 26.APR.2007 in Rp 861: with the amendment of TSE Res. 22503/2006, broadcasting spaces for the dissemination of party publicity in regional chains were extinguished.

II - the use of a total of forty minutes per semester for thirty-second or one-minute inserts on national networks and equal time on state broadcasters.

TITLE V

GENERAL PROVISIONS

Article 50. (Vetoed.)

Article 51. Political party registered with statute registered with the Superior Electoral Court are assured the right to freely use public schools or Legislative Houses for their meetings or conventions, taking responsibility for the damages perhaps caused with their events.

- Lei 9,504/1997, Article 8, paragraph 2: free use of public buildings for holding conventions to choose candidates.

Article 52. (Vetoed.)

Sole paragraph. Radio and television stations shall be entitled to tax compensation for the concession of free time provided in this Law.

- Lei 9,504/1997, Article 99, Paragraph 1 to 3, added by Article 3 of Law 12,034/2009:

"Article 99. [...]

Paragraph 1 The right to tax compensation of radio and television stations defined in the single paragraph of Article 52 of Law No. 9,096 of September 19, 1995 and in this Article for their concession of free time for the dissemination of party and electoral advertising extends also to the free advertising offered for plebiscites and referendums provided in Article 8 of Law No. 9,709, of November 18, 1998, and in both cases the following understanding shall prevail:

I - (Vetoed.);

II - the amount calculated under item I may be deducted from net income for purposes of determining the taxable income for calculation of the Income Tax of Legal Entities (IRPJ), including the calculation of the basis for calculating the monthly payments provided for in tax law (Article 2 of Law No. 9430 of December 27, 1996), as well as the basis for calculating the deemed income.

Paragraph 2 (Vetoed.).

Paragraph 3 In the case of micro and small businesses who opt for the Special Unified Regime for Collection of Taxes and Contributions (the Simples Nacional), the full amount of tax compensation calculated in accordance with item I of Paragraph 1 shall be deducted from the basis for calculation of federal taxes and contributions payable by the issuer, following the criteria defined by the Steering Committee of the Simples Nacional (CGSN)."

- Decree 5,331/2005: "Regulates the sole paragraph of Article 52 of Law 9,096 of September 19, 1995, and Article 99 of Law 9,504 of September 30, 1997, for purposes of tax compensations for the free dissemination of party or electoral advertising".
- SRF Interpretive Declaratory Act No. 2/2006 (*Official Gazette* of 10.MAR.2006), which "Provides the criterion for calculating the tax compensation applicable

to free dissemination of party or electoral advertising": "Sole Article. The tax compensation referred to in Article 1 of Decree 5331/2005 corresponds to eight tenths of the sum of the amounts effectively practiced on the programming grid on the day before the commencement of the free dissemination of party or electoral advertising. Paragraph 1 For the purposes of the *caput*, "amounts effectively practiced" mean the amount obtained by multiplying the price of the marketed space by the time of screening of the advertising contracted. Paragraph 2 In the event that the time allotted for free publicity covers only part of a slot marketed/sold on the day before the first free publicity, the amount actually charged shall be determined in proportion to the time covered. Paragraph 3 The provisions of this Article shall apply also in relation to communiqués, instructions and other requests from Electoral Courts relating to party and electoral advertising".

- TSE Res. 22,917/2008: establishes the competence of Federal Courts to review requests for extension of the fiscal compensation prerogatives for companies authorized by the government for exploration of transport and communications network services. Also annulled alternative request for formalization of contract with the TSE for transmission of the signal generated to television and radio stations during free party and electoral advertising.
- TSE Dec. 690/2004: absence of right to tax compensation in the event of deferral of new date for broadcast of party advertising due to technical failure on the side of the broadcaster.

Article 53. A foundation or *institute* of private law created by a political party for study and research, indoctrination and political education shall be governed by the rules of civil law and shall have autonomy to contract with public and private institutions, provide services and maintain establishments in accordance with their purposes, and may also maintain exchanges with non-national institutions.

- TSE Res. 22,121/2005: "Provides rules to ensure the adherence of research, indoctrination and political education institutes or foundations created by political parties to the rules established in the 2002 Civil Code". According to this resolution, the entities referred to in this Article shall take the form of foundations of private law, to which must be converted, within the terms and deadlines of civil law, those entities created in the form of an institute, association or civil society (Article 1, *caput*, Paragraph 1, and Article 3).
- See Article 44 of this Law: application of Party Fund resources for the creation and maintenance of the foundations referred to in this Article.

Article 54. For purposes of application of the defined in this Law, the Federal District and the Territories, as well as their political-administrative divisions, shall be considered as equivalent to states and municipalities.

TITLE VI

FINAL AND TRANSITIONAL PROVISIONS

Article 55. Political parties which had definitive registration under previous legislation are exempt from the requirements laid down in Paragraph 1 of Article 7, and shall provide for the adaptation of their statute to the provisions of this Law within six months from the date of its publication.

Paragraph 1 The statutory adjustments made for the purposes set forth in this Article may be effected by the political party during a meeting of its highest national body especially convened in the form of its statute, with at least thirty days of notice and wide dissemination of the draft amended statute among its bodies and members.

Paragraph 2 The provisions of this Article apply to parties which, at the date of publication of this Law:

I - have completed their process of organization under the previous legislation and required definitive registration;

II - have their registration request *sub judice*, as long a favorable decision on the matter is issued by the judiciary authority;

III - have requested registration of their statutes to the Superior Electoral Court after proper registration as a civil entity.

Article 56. In the period between the date of publication of this Law and the beginning of the next legislature, the following shall be considered:

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: gives the *caput* of this Article an interpretation that eliminates the time limitations contained therein until new legislative provisions are enacted.

I - parties that have elected and maintained in affiliation at least three representatives from different states are hereby guaranteed the right to *parliamentary functioning* in the Chamber of Deputies;

- See first note to Article 13 of this Law.

II - The Directorate of the Chamber of Deputies shall define the functioning of the party representation conferred, during this period, to the party that has elected or affiliated representation in numbers lower than those of the provisions of the preceding paragraph;

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: dismisses unconstitutionality complaint of this subsection.

III - parties that meet the conditions of section I are hereby assured the annual right to hold an segment on national television lasting ten minutes;

IV - parties with deputies in the Chamber of Deputies since the beginning of the 1995 Legislative Session are hereby assured the right to carry out one five-minute segment on national chain each semester (non-cumulative with the time periods provided for in item III);

V - (Repealed by Article 2 of Law 11,459/2007.)

Article 57. In the period between the beginning of the next Legislature and the proclamation of the results of the second subsequent general election for the Chamber of Deputies, the following shall be observed:

- STF Dec. of 7.DEC.2006, in ADIs 1351 and 1354: gives the *caput* of this Article an interpretation that eliminates the time limitations contained therein until new legislative provisions are enacted.

I - right of *parliamentary functioning* for the party with definitive registration of its statutes in the Superior Electoral Court until the date of publication of this Law which, since its foundation, has run or will run in the general elections for the Chamber of Deputies, electing deputies in two consecutive elections:

- See first note to Article 13 of this Law.

a) for the Chamber of Deputies, every time it elects a representative in at least five states and obtain at least one percent of the votes counted in the country, not counting blank or null votes;

- TSE Dec. of 14.FEB.2012 in Special Res. 1721863; TSE Dec. of 16.DEC.2010, in PP. # 394710: the political party shall meet the provisions of this subparagraph whenever it elects representatives in five states and obtain one percent of the votes in the country, as long as it has also elected representatives in the previous election (in this case, regardless of how many states it has elected representatives or what percentage of votes it has obtained).

b) in the State Legislative Assemblies and the City Council Chambers, every time it has met the requirement of the preceding item, elected a representative for their respective House of parliament and obtained a total of one percent of the votes counted in the constituency, not counting blank or null votes;

II - (Repealed by Art. 2 of Law 11,459/2007.)

III - is hereby ensured to the parties referred to in item I, subject, where applicable, to the provisions of Title IV:

a) the broadcasting of one ten-minute segment on national chain per semester;

b) the use of a total time of twenty minutes per semester in thirty-second or one-minute inserts on national chain, and the same time in the state stations *of the states where it has met the requirements of item I, b.*

- TSE Dec. of 11.MAR.2008 in Special Res. 21,334: unconstitutionality of the highlighted excerpt.
- TSE Res. 20,991/2002: "The provisions of Article 57, item III apply to the period between the beginning of the legislature initiated in 1998 (*'next legislature'*) and the proclamation of the results of the general election to be held in 2006 (*'second subsequent general election'*)".

Article 58. At the request of the party, the Electoral Judge shall return the completed party affiliation forms to the Electoral Clerk of the respective Voting Zone, and the first list of affiliates shall be thus organized, pursuant to Article 19, subject to the statutory norms.

Sole paragraph. For purposes of applying for elective office, "first affiliation" shall be considered as the one recorded in the list referred to in this article.

Article 59. Article 16 of *Law 3,071 of January 1, 1916 (Civil Code)* shall henceforth read as follows:

"Article 16. [...]

III - political parties.

[...]

Paragraph 3 The political parties shall be governed, as it may be applicable to them, by the provisions in Articles 17 to 22 of this Code and in specific legislation."

- See note to Article 1 of this law.

Article 60. The articles listed below of Law 6,015 of December 31, 1973 shall henceforth read as follows:

"Article 114. [...]

III - the articles of constitution and statutes of the political parties.

[...]

Article 120. The registration of companies, foundations and political parties shall consist of the statement, made in official books, of the order number, date of presentation and type of constitutive act, with the following indications:

[...]

Sole paragraph. For the registration of political parties, the provisions of specific legislation shall be obeyed in addition to the requirements of this Article."

Article 61. The Superior Electoral Court shall issue instructions for the faithful execution of this Law.

- TSE Resolutions 23282/2010 ("Disciplines the creation, organization, merge, consolidation and extinction of political parties"), 20,034/97 ("Instruction for free access to radio and television by political parties"), 21377/2003 ("[...] Disciplines new procedures to be adopted by the IT Department of the TSE in cases of merger or consolidation of political parties"), 21841/2004 ("Disciplines the rendering of accounts by political parties and the special rendering of accounts"), 21875/2004 ("Regulates the collection of percentage-based Party Fund shares from policy education/indoctrination and research institutes or foundations"), 21975/2004 ("Disciplines the collection of fines provided for in the Electoral Code and related laws and the distribution of funds from the Special Fund for Financial Assistance to Political Parties (Party Fund)", TSE Ordinance 288/2005"), 22121/2005 ("Provides rules to ensure the adherence of research, indoctrination and political education institutes or foundations created by political parties to the rules established in the 2002 Civil Code"), 23117/2009 ("Provides rules on party affiliation, approves new system for submission of the data reported by the parties to the Electoral Courts and other measures") and amendments thereto, 23093/2009 ("Provides rules on the Party Information Management System - SGIP").

Article 62. This Law shall enter into force on the date of its publication.

Article 63. Are hereby repealed Law 5,682 of July 21, 1971 and amendments thereto; Law 6,341 of July 5, 1976; Law 6,817 of September 5, 1980; Law 6,957 of November 23, 1981; Article 16 of Law 6,696 June 7, 1982; Law 7,307 of April 9, 1985 and Law 7,514, of July 9, 1986.

Brasilia, September 19, 1995; 174th year of the Independence and 107th of the Republic.

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Nelson A. Jobim

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