
PART 3

LEGISLATIVE POWER UNDER THE RULES OF PROCEDURE OF THE LEGISLATIVE ASSEMBLY

VI.

THE CENTRALITY OF THE RULES OF PROCEDURE OF THE LEGISLATIVE ASSEMBLY IN THE LEGISLATIVE PROCEDURE

1. The Centrality of the Rules of Procedure and the Intersection and/or Pre-Determination of Other Norms: An Introduction

Sidestepping the core issues often constitutionality pre-defined in the legislative procedure — such as the area of norm-making by the law; legislative initiative; signature; publication — the Rules of Procedure of the Legislative Assembly serve as the bedrock²⁶⁴ sustaining the filigree of lawmaking, the steps to be taken, the timing of such steps and the allocation of tasks to the different bodies of the Legislative Assembly.

In other words, there is a centrality²⁶⁵ to the Rules of Procedure with respect to the legislative procedure since the overwhelming majority of procedural steps and stages are established, developed, or implemented therein. Such centrality is rendered completely arrant by the reality of a single legislative body existing in the MSAR — there is, simply put, no other local body able to enact legislative acts.²⁶⁶

The complex and lengthy path traialed by a bill — from its introduction until its transformation into a formal legislative act of the Legislative Assembly — is, by and large, set out in the Rules of Procedure of the Legislative Assembly: be it *ex novo*, as is the general case; be it by replicating and reaffirming constitutional provisions of the Basic Law; or be it by *intermediating* — ie developing, implementing and extending constitutionally pre-established norms.

From the previously discussed norms contained in the Basic Law and other normative acts, a few conclusions can be clearly drawn. Primarily, matters pertaining to fundamental rights are reserved to the Law and solely to the Law. The legislative initiative

²⁶⁴ This is a common solution in comparative law; cf, for instance, ‘Given the normative scarcity of the Constitution regarding the legislative procedure, its basic source is found on the rules of Procedure’ of the parliaments, Piedad García-Escudero Márquez, ‘El Procedimiento Legislativo en las Cortes Generales: Regulación, Fases y Tipos’ (2005) UNED Teoría y Realidad Constitucional 16, 217.

²⁶⁵ Centrality does not necessarily entail a qualitative or a founding or primary importance in the strict sense of these terms; see eg Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009) 665.

²⁶⁶ A different issue to address altogether is whether other regional legislative acts should exist and if, pre-conditionally, some higher norms could point thereto.

in such matters is of a shared nature, involving both Members and the Government/Chief Executive. Every bill requires the approval of the Legislative Assembly in a Plenary session through a given majority. Additionally, the signature of the Chief Executive and the order for publication are indispensable, with such publication transpiring in Series I of the OG.

Another conclusion or example has already been reached thus far: the essential elements of the taxation framework may only be subject to regulation by law of the Legislative Assembly, the respective legislative initiative being reserved to the Government/Chief Executive. Nevertheless, as above, the Government's bill requires approval by the Legislative Assembly in a Plenary session, followed by the Chief Executive's signature and subsequent publication in Series I of the OG.

Do the aforementioned information and conclusions allow one to know everything about the legislative procedure, ie everything that is required for a bill to be transformed into law?

The answer is a resounding “no.”

Several procedural details remain opaque. How, for instance, is a bill formally accepted? What are the conditions for introducing bills? What are the deadlines to be observed for their appraisal? How are the bills made public? How are they voted upon? Is there a single voting mechanism or more than one? What is the form of voting? Which bodies of the Legislative Assembly are involved in such a process? Are there reports on the bills? Do such reports precede the first voting, or are they issued subsequently? What are the deadlines for submitting amendment proposals? And for the reports? May bills be withdrawn? Until when? What are the procedures to be followed, and who is competent for the final drafting of the laws? May a specific bill be processed urgently? If so, under which terms and on what grounds? How are these various acts sequenced and linked together?

Such questions are answered in the procedural norms of the Legislative Assembly. They are not answered — at least immediately and sufficiently — neither by the Basic Law nor by the other normative acts previously referred to.

Without prejudice to the intersection with, and/or pre-determination of, other norms, the Rules of Procedure of the Legislative Assembly do codify, develop, and implement the legislative procedure of the MSAR.

2. Resolution No. 1/1999 and the Amending Resolutions: Brief Remarks

The Rules of Procedure were approved by Resolution No. 1/1999 and subsequently

amended by Resolutions No. 1/2004,²⁶⁷ No. 2/2009,²⁶⁸ No. 1/2013,²⁶⁹ No. 1/2015,²⁷⁰ and No. 2/2017.²⁷¹ The legal form for the enactment of the approval of, and of amendments to, the Rules of Procedure of the Legislative Assembly has been the resolution of the Plenary, although, as alluded to above, another specific legal form could be conceivable. The approval of the Rules of Procedure results from the exercise of an absolute competence expressly granted by the Basic Law to the Legislative Assembly — without a scintilla of hesitation, there is, as such, a substantive area of absolute original and supervening procedural norm-making initiative in favour of the Legislative Assembly and its Members.²⁷² Nor could it be otherwise, even if the Rules of Procedure were silent on such issue, as this normative territory belongs to the domain of the internal self-organisation of the legislative body.

Although more relevant to the subject-matter to be addressed in the next chapter (eg the nature of the Rules), I would like to take this opportunity to discuss the various amending resolutions, from the point of view of their normative procedure, particularly with respect to the enabling constitutional norms and the correctness of the invocation thereof.

Resolution No. 1/1999, which approves the Rules of Procedure of the Legislative Assembly,²⁷³ begins with these introductory words: “*The Legislative Assembly resolves, under paragraph (2) of Article 77 of the Basic Law of the Macau Special Administrative Region, the following:*”. In other words, it bases its authority correctly on Article 77 of the Basic Law.

Resolution No. 1/2004 rightly invokes the enabling norm of the Basic Law, adding the regulatory norm regarding the form, publication, and entry into force of the Rules: “*The Legislative Assembly resolves, under Article 77 of the Basic Law and Article 161 of its Rules of Procedure*”.

²⁶⁷ Among other amendments, the text of Articles 6, 16, 22, 25, 26, 28, 30, 36, 37, 83, 84, 85, 86, 89, 90, 98, 102, 107, 113, 114, 119, 120, 137, 138, 139, 153, 157, 160 and 161 was modified. Pursuant to Article 4 of this resolution, the Rules of Procedure were republished in its entirety, with the amendments inserted in their proper place, and, in view of the deletion of a few provisions, the text of the amended Rules was renumbered.

²⁶⁸ Among other amendments, Articles 9, 35, 50, 64, 127, 129, 147 and 151 were modified, and Subsection II-A, on monitoring committees, was added to Chapter IV. When this amendment was made, the Rules were republished in its entirety and a consolidated version, pursuant to Article 4 of the Resolution: “*The Rules of Procedure of the Legislative Assembly, approved by Resolution No. 1/1999, as amended by Resolution No. 1/2004 and by the present resolution, are republished and renumbered in accordance, in the annex hereto*”.

²⁶⁹ Only a minor modification to Article 27 was introduced.

²⁷⁰ Resolution No. 1/2015, which *Amends the Rules of Procedure of the Legislative Assembly*, modifying the text of Articles 2, 53, 60, 72, 109 and 142, and repealing article 54 said Rules.

²⁷¹ Resolution No. 2/2017, which amends Articles 11, 17, 31, 34, 42, 49, 52, 58, 59, 81, 98, 110, 111, 112, 135, 136, 139, 141, 146, 149, 154 and 161 of the Rules of Procedure of the Legislative Assembly, and repeals subparagraph (d) of Article 11 and paragraph (2) of Article 110, thus introducing changes with a major impact, namely within the legislative procedure, effective from October 2017 — for example the excision of the possibility of adopting an initiative; the relevant procedure of acceptance and rejection of the legislative projects, especially with regard to Governments bills and to the challenges (on appeal) to such decision thereon.

²⁷² See Article 160 of the Rules of Procedure.

²⁷³ Which is annexed thereto, forming an integral part thereof, pursuant to Article 1 of said resolution.

Resolution No. 2/2009, on the other hand, wrongly invokes Article 71²⁷⁴ as the enabling constitutional norm, insofar as the competence to approve and to amend the Rules of Procedure ends up in confusing two distinct functions. However, it correctly invokes the procedural norm: “*The Legislative Assembly resolves, under Article 71 of the Basic Law and Article 159 of its Rules of Procedure, the following:*”²⁷⁵

Resolution No. 1/2013 rightly restores the effectively enabling constitutional norm²⁷⁶ and specifies the procedural norm on the form, publication, and entry into force contained in the Rules of Procedure: “*The Legislative Assembly resolves, under paragraph (2) of Article 77 of the Basic Law of the Macau Special Administrative Region and paragraph (1) of Article 161 of its Rules of Procedure, the following:*”.

Resolution No. 1/2015 is likewise correct: “The Legislative Assembly resolves, under paragraph (2) of Article 77 of the Basic Law of the Macau Special Administrative Region and Article 161 of its Rules of Procedure, the following:”.

The same applies to Resolution No. 2/2017, with a nuance in the procedural enabling form: “The Legislative Assembly resolves, under paragraph (2) of Article 77 of the Basic Law of the Macau Special Administrative Region, the following:” — thus omitting the appropriate reference to the regulatory procedural norm.

²⁷⁴ I must make the supposition that the reference is to subparagraph (1). There is no other subparagraph in Article 71 that could be brought forth in this normative process.

²⁷⁵ This resolution is still tainted by a formal error, because it confuses the Rules of Procedure, approved by Resolution No. 1/1999 and contained in the Annex thereto, with the resolution *per se*: “(Amendments to Resolution No. 1/1999) Articles 9, 35, 50, 64, 127, 129, 147 and 151 of Resolution No. 1/1999, which approved the Rules of Procedure of the Legislative Assembly, shall have the following text:”. However, it is not Resolution No. 1/1999 that is being amended, but rather, of course, the “Rules of Procedure of the Legislative Assembly of the Macau Special Administrative Region, which are attached thereto and form an integral part of the present resolution.” This error was not repeated in the other resolutions. For example, in Resolution No. 1/2004, “Articles [...] of the Rules of Procedure of the Legislative Assembly, approved by Resolution No. 1/1999, shall have the following text:”. Similarly, in Resolutions No. 1/2013, No. 1/2015 and No. 2/2017.

²⁷⁶ Paragraph (2) of Article 77: “The Legislative Assembly shall make, on its own, its rules of procedure, which may not contravene this Law.” It is true that, in this matter, as in others, the Basic Law opts for regulatory modesty or maybe for a somewhat radical or distorted view of the then-current thesis of “*normative simplification*”. For example, compare the equivalent rules of the Organic Statute of Macau — Article 30, paragraph (1), (j): The Legislative Assembly is competent to make its internal rules of procedures, in addition to the development pursuant to Article 42, which established: “The Rules of Procedure of the Legislative Assembly shall contain: a) The composition and competences of the Board; b) The organisation of the committees considered necessary; c) The form of voting; [...] e) The conditions for the introduction of bills for territorial laws [...] f) The procedural protocols to be followed for the final drafting of laws [...] h) The regulation of the powers, rights, immunities and privileges of the Members of the Assembly; i) Other rules contained in this Statute and also those considered necessary for the functioning of the Assembly.” This norm, naturally no longer in force, shall not fail to have a potentially relevant role to play as regards the interpretation and development of the corresponding article of the Basic Law, in obedience to the principle of continuity. In truth, there is nothing in the Basic Law implying or suggesting that the Rules of Procedure, to which said Law refers, is (or has to be) radically different from the Rules of Procedure of the Legislative Assembly in effect prior to the establishment of the MSAR. An inattentive look at the current Rules of Procedure confirms that the Legislative Assembly created such Rules in a way that is, structurally and fundamentally, a continuation of the previous ones, excepting, of course, the differences directly derived from the Basic Law and the different options in terms of legislative policy (eg the approval of a bill on the whole before the report of the examining committee, and not in the reverse order, as was the case previously).

I shall now continue with the journey, after this short *sojourn*.

3. Overview of the Rules of Procedure with respect to the Legislative Procedure

Allow me to present a birds-eye view of the legislative procedure,²⁷⁷ within the regulatory scope of the Rules of Procedure of the Legislative Assembly.

Emphatically, the Rules of Procedure open with the following Article, entitled “*Powers in the legislative sphere*”:

“The Members have the power, in exercising the legislative competence of the Legislative Assembly, to:

a) Introduce bills and draft resolutions;

b) Introduce proposals to amend the bills and drafts referred to in the preceding paragraph, as well as to Government bills;

c) Apply for the urgent processing of any of the bills, drafts and proposals provided for in the preceding paragraphs.”

In other words, the Members’ powers in legislative matters are draped as a noble function,²⁷⁸ with a primary role, at least symbolically.²⁷⁹ Moreover, from this first provision, several important norms immediately irradiate, namely: the power of original legislative initiative, through the introduction of bills; the power of supervening initiative, affirmed, in principle, *vis-à-vis* both Members’ bills and Government legislative initiatives (*as well as to Government bills*); and the power to request urgency processes of any and all types of bills.

Some questions do arise as to the inclusion of the draft resolutions,²⁸⁰ as framed under the heading “*Powers in the legislative sphere*” and “*in exercising the legislative competence of the Legislative Assembly*”. Is it the intent that normative resolutions also adopt the form of law, even though using another procedural designation — or, better still, a different form of law? Or is such inclusion explained by criteria of formal drafting techniques and/or to a perceived convenience of insertion and systematic reference? Or,

²⁷⁷ For an overview, António Katchi, *As Fontes do Direito em Macau* (Faculdade de Direito da Universidade de Macau 2006) 480, et seq.

²⁷⁸ Recall Article 75 of the Basic Law and see also, “Article 39 (Referral) The functional powers of the Members, in legislative and supervisory matters, including other powers and duties that are instrumental thereto, are regulated in the Rules of Procedure of the Legislative Assembly, Law No. 3/2000, as amended by Law No. 13/2008 and Law No. 12/2009, “On the Legislature and the Legal Status of Members of the Legislative Assembly”.

²⁷⁹ The Rules of Procedure of the Assembly of the Portuguese Republic contain, in Article 1, *the start date and term of the mandate*. The same was true regarding the Rules Procedure of the Legislative Assembly, in force until 19 December 1999.

²⁸⁰ It should be noted that, inconsistently with the provisions of Article 1, the power to propose amendments to the Rules of Procedure, which follows the form of a resolution, seems to be classified as an instrumental power, pursuant to Article 3 of said Rules.

moving in another direction, what is at stake is not an assimilation by, or an equivalence to, the *form of law*, but the extolling of a *value/force of law or equivalent*?

Article 9 lays down the following bundle of powers that the President of the Legislative Assembly is competent to exercise, in the context of the legislative procedure:²⁸¹

- “To summarily accept or reject bills, draft resolutions and draft simple deliberations by the Plenary, challenges and applications, after verifying the procedural regularity thereof, without prejudice of his or her decision, in the event of a total or partial rejection, being subject to appeal to the Board and subsequently to the Plenary;”
- “Submit to the competent specialised committees for the purposes of examination and reporting, the texts of the bills, draft resolutions, and draft simple deliberations by the Plenary;”

And still on topic:

- “To promote, in tandem with the Board, the creation of committees and to ensure compliance with the deadlines established in the Rules of Procedure or by the Plenary;”
- “In general, to ensure compliance with the Rules of Procedure.”

Article 10 makes it incumbent upon the President of the Legislative Assembly to put all bills, drafts, and proposals to debate and to voting by the Plenary, and to inform the latter of those that have been summarily rejected.²⁸²

Article 12 confers several other competences upon the President of the Legislative Assembly: to give notice to the Chief Executive of the refusal to approve the Government bills referred to in Article 52, subparagraph (2) of the Basic Law; to give notice to the Chief Executive of the confirmation of a Member’s (or Members’) bill, in the event provided for under Article 51 of the Basic Law; to give notice to the Chief Executive of a new refusal to approve the Government bills provided for in subparagraph (a), pursuant to Article 54 subparagraph (3) of the Basic Law; to send the approved bills to the Chief Executive, for signature and publication, pursuant to Article 50, subparagraph (3) of the Basic Law; to exercise, on his or her own initiative, or at the request of any Member, the right to invite third parties to participate in plenary meetings, without prejudice to Article 50, subparagraph (15), and of Article 64, subparagraph (6), of the Basic Law.

²⁸¹ Article 74 of the Basic Law, in particular its paragraph (6), which provides that the President of the Legislative Assembly of the MSAR is competent to “*Exercise other powers and functions, as conferred by Rules of Procedure of the Legislative Assembly.*”

²⁸² See also Article 51, on the *duty to inform*.

Under Article 18,²⁸³ the Board of the Legislative Assembly is competent to decide on all issues of interpretation²⁸⁴ and solving omitted cases or *lacunae* in the Rules.²⁸⁵ Article 26 complements this norm, to some extent, by establishing that the Committee on the Rules of Procedure and Members' Mandates shall issue an advisory opinion on such issues, upon submission thereto by the President, the Board, or the Plenary. The said Committee shall also opine on draft resolutions to amend the Rules of Procedure, as well as to suggest to the Plenary "*the modifications that the practice may advise*".

Article 28 lays down the competence of the standing committees to examine and to report on bills, and the amendment proposals thereof, introduced to the Legislative Assembly. Exceptionally, such committees may also vote on the specifics of a bill *after* its approval in general by the Plenary, if the latter decides on such a course.

Article 56 deals with the agenda of the plenary meetings, establishing a set of priorities. In accordance with the Basic Law, the initial items are Government bills, as requested by the Chief Executive. Subsequent bills are ordered based on the significance of the subject matters, with topics such as elections, the budget, fundamental rights, and the taxation framework taking precedence.

Article 60 specifies that when addressing the Plenary for the introduction of bills or proposals, speakers are restricted to a brief indication of the object.²⁸⁶

Article 66 governs the *cherished* and often employed²⁸⁷ instrument of the voting explanation.²⁸⁸

Article 73 provides that Members who authored the bill under scrutiny may participate, without the right to vote, in the competent committee's meetings.²⁸⁹ The said Members may address the committee in question without the authorisation of the respective President.

²⁸³ See also article 159, paragraph (1), of the Rules of Procedure, which provides that "The Board is competent to interpret the present Rules and to solve the omitted cases, being able, for this purpose, to consult the Committee on the Rules of Procedure and Members' Mandates."

²⁸⁴ It is not unreasonable to remind the reader that this task of legal interpretation should be guided, as occurs in other legal orders, by a certain idea of *in dubio pro parlamentum*, ie in favour of the Legislative Assembly and what bodies of a parliamentary nature represent. See, for example, "*The interpretation, in particular, must be performed in such a way that the representative and participatory character of Parliament is reinforced and not limited*": Marina Altamirano, *Manual de Procedimientos Legislativos* (Editorial Juricentro 2008) 295.

²⁸⁵ In other words, two different powers are at stake: interpretation of the Rules of Procedure and, on a different plane, solving gaps, loopholes and omitted cases and filling *lacunae*, depending on whether Article 18 (and 159) or Article 26 of the Rules are being read.

²⁸⁶ A rule that was, at times, clearly ignored.

²⁸⁷ Indeed, one often witnesses silence during the debate, followed by a long litany of explanations of vote.

²⁸⁸ To clarify the meaning of the vote, ie whichever way the vote was cast, be it favourable or dissenting (even including abstentions).

²⁸⁹ I believe that the correct understanding is that only the Member(s) who, having introduced the bill — ie being the proponent(s) — do not belong to that committee, shall not be entitled to vote. In other words, a proponent who is also a Member of the committee does not lose his or her right to vote.

Article 81²⁹⁰ contains the necessary majority rules for approval, stating that “Deliberations aimed at approving the matters provided for in subparagraphs (b), (c) (d) and (e) of Article 56 shall be passed by a qualified majority of two-thirds of the total number of Members.” This refers to confirmations outlined in Article 54, paragraph (2), and Article 5 of the Basic Law. Additionally, it pertains to the Government bill for amending the Electoral Law of the Legislative Assembly, pursuant to paragraph (3) of Annex II to the Basic Law, and to bills and proposals for the purposes of paragraph (7) of Annex I to the Basic Law.

Paragraph (2) declares that “Deliberations aimed at approving the matters provided for in the remaining paragraphs of Article 56, with the exception of paragraph (r),²⁹¹ shall be passed by more than one half of the total number of Members.” In other words, this norm replicates the general rule of the absolute majority, as provided for in Article 77 of the Basic Law.²⁹²

The above are clear examples of procedural rules that merely incorporate, into the Rules of Procedure, the higher-level and *ex ante* defined norms of the Basic Law, thus bestowing undoubted *constitutional force* upon such rules.

Article 85, as mentioned earlier, seems to “*de-locate from the Rules of Procedure*” to legislative acts, by means of an *upgrading* of the source of norm-making in this case. This is evident when it specifies in paragraph (2) that “*The rules on the identification, forms and template, publication, rectification/correction and entry into force of laws and resolutions are governed by law.*”

Recalling the originally proposed text of the Rules of Procedure of the Legislative Assembly, a similar norm for “*de-location*” or normative *upgrading* was, in fact, introduced in Article 1, involving matters under the purview of, or to be included into, the law, namely the Legal Status of the Members. The said norm, however, was not greeted with approval and disappeared in the final text of the Rules.²⁹³

In effect, Draft Resolution No. R1/I/1999-1, drawn up by the CRPMM,

²⁹⁰ This Article has undergone modifications introduced by Resolution No. 2/2017, namely a new paragraph (4) explicitly explaining that “*approval by simple majority means that the deliberations have more votes cast in favour than against.*”: in an exercise of futility and normative inappropriateness.

²⁹¹ This is a matter for draft simple deliberations of the Plenary.

²⁹² Therefore, repealing the general rule that the deliberations of the Legislative Assembly are passed by a simple majority of the votes of the Members present in the Plenary meeting (with exceptions, *inter alia*, cases of a two-thirds majority of the Members fully exercising their functions within their mandate (a.k.a., in office). Naturally, this possibility of approving laws by a simple majority would make it less difficult to pass Members’ bills. As a matter of fact, there have been bills which have mustered more votes in favour than against; by virtue of the absolute majority rule (the criterion being the total number of Members), such bills were not approved. One should also note that the “*total number of Members*” will not always and absolutely be equivalent to “*Members fully exercising their functions within their mandate*”.

²⁹³ This would not be a unique nor innovative example. In fact, Article 192 of the Rules of Procedure of the Legislative Assembly of 1977, established that the law would regulate its Support Services, under the significant heading “*Referral to the law*”. Such is confirmed by the preamble of Law No. 3/77/M, of 28 May 1977, “*Services of the Legislative Assembly*”: “*Article 192 of the Rules of Procedure of the Legislative Assembly provides that a special law shall regulate the Services thereof.*”

contained the following wording:

“Article 1 (Perimeter of matters governed by the Legal Status of the Members)

The Legal Status of the Members shall regulate the following matters:

- a) The scope and the initial date and the term of the legislature, the legislative session, the normal period of functioning of the Legislative Assembly and the mandate;
- b) The pre-requisites, conditions, procedures and effects of Members’ resignation, suspension of mandate and disqualification;
- c) The Members’ immunities and other conditions for exercising their mandate;
- d) The Members’ general rights and duties, which do not have a direct connection with the exercise, in particular, of the political, legislative and supervisory powers of the Legislative Assembly of the Macau Special Administrative Region;
- e) The procedure for the verification of credentials.”²⁹⁴

²⁹⁴ Cf the address delivered by Member Leonel Alves: “I begin by pointing out the first reason: in the first plenary meeting of this Assembly, much was said about what should be included in the Rules of Procedure and what should be contained in the “Legal Status of the Members”. In fact, this issue has been discussed at length, as we will have a Basic Law in force from the 20th of this month, different from the Organic Statute of Macau. Thus, we find that the effort made, in order to clearly delimit the boundary between these two legal enactments, was enormous: on the one hand, the Rules of Procedure and, on the other, the “Legal Status”. What we have here, in Article 1, is the result of said effort. From Article 2 onwards, the matters therein should belong to the Rules of Procedure, while the “Legal Status of the Members” should be the proper place for that established in Article 1. Such is the result of the reflection we promised to undergo when, in this Chamber, we met for the first time. The second reason, which led to the inclusion of this Article in the draft, has to do with my belief that it is not “a transitory or temporary rule”: but rather one “of transition”. We will have new Rules of Procedure — ie “new” when compared to the previous ones! — the first of the Macau Special Administrative Region, regulating the activity of this legislative body. No harm would come, it seems to me — or, at least, there would be no formal deficiencies — if we included this Article in the Rules, the purpose of which is, as I have said, solely and exclusively, to adapt, during this period of transition, to a new law that will sovereignly regulate local issues — the Basic Law. Perhaps, after this period, and in two or three years, it will prove unnecessary. For this very reason, I call this law “the law of transition” — in two, three, four or five years, it may become totally unnecessary and useless. Therefore, the purpose of its inclusion has the objective, I repeat, of showing that there are issues to be dealt with, in the Legal Status of the Members: through a law. As an example, I would like to say that, in one of the meetings we held, an Esteemed Colleague warned of the need to specify, in the Rules of Procedure, the normal period for the Assembly to function, or better still, when each legislative session begins and ends, and when the extraordinary period of functioning begins. The truth is that he found no answer in the Rules. At the time, it was said that we may not deal with this type of issue in the Rules of Procedure, as it must be contained in a law, as referred to in Article 1: “The scope and the initial date and the term of the legislature, the legislative session, the normal period of functioning of the Legislative Assembly shall be regulated by law.” It was through a specific and paradigmatic example that the usefulness of the Article was demonstrated. We might ask: Is/Was it in error? No, it is because Article 1 establishes that there has to be a law. The third reason for its insertion is for my Esteemed Colleagues to ascertain if any of these matters, a), b), c) or d) — which we believe merit inclusion in a law — should, on the contrary, be included in the Rules of Procedure. Therefore,

In an inverted direction, the Legal Status of the Members²⁹⁵ apparently “de-locates” these matters through a *downgrading* of the source of norm-making, the loci of which are the Rules of Procedure. One might call this phenomenon “delegalising pro Rules of Procedure (Regimento)”. Article 39 of said law stipulates the following: “*The functional powers of the Members, in legislative and supervisory matters, including other powers and duties that are instrumental thereto, are regulated in the Rules of Procedure of the Legislative Assembly*”; Article 5, paragraph (2) establishes: “*The anticipation or extension of the normal period of functioning are regulated in the Rules of Procedure of the Legislative Assembly.*” As such, matters reserved to parliamentary procedural norms are declared or clarified in a formal law.

In Articles 92 *et seq.*, one finds a set of norms on the publicity/transparency of the work carried out by the Legislative Assembly, including rules on the Legislative Assembly’s Bulletin and its several Series. Such transparency entails, *inter alia*, the publication of the verbatim account of the plenary meetings, of the texts pertaining to bills, reports of the competent committees, and final drafts of approved bills.²⁹⁶ Among them, Article 97 deserves special emphasis.²⁹⁷

Naturally, what follows are the strictly procedural rules on the legislative

this has to do with what I underlined at the start of my speech: pursuant to the debate at the first plenary session, we promised to make an effort to know what should be in a law and what should be in the Rules. This was the result of our conclusions. I don’t know if I have been sufficiently clear as to the reasoning behind this preliminary draft. I reiterate that the objective is to elucidate the Esteemed Colleagues about the work that we performed and the separation of the subject-matters that we intend to pursue.” The recommended norm was, however, deleted.

²⁹⁵ Law No. 3/2000.

²⁹⁶ These rules, plus the existence and content of the Legislative Assembly’s website, allow us apply the following words to the MSAR: “*The parliamentary legislative procedure is an open, transparent procedure, in which all documents received are available on the website of the Assembly of the Republic and in the 2nd series of the Journal of the Assembly of the Republic*”: João Caupers and Marta Tavares de Almeida and Pierre Guibentif, *Feitura das Leis: Portugal e a Europa* (Fundação Francisco Manuel dos Santos 2014) 119. In this regard, Osvaldo Castro affirms, in essentially parallel legal order, that the parliamentary legislative procedure is public, from the introduction of the legislative initiative until the signature of the President of the parliament; transparent because it is conducted in public meetings (in the case of the Legislative Assembly, in principle, only the plenary meetings); subject to public scrutiny, during and afterwards (see, in the case of Macau, the website of the Assembly Legislative); participated, as all citizens/residents may comment on the proposed solutions (there is a general invitation on the website of the Legislative Assembly to such end); subject to political opposition (although, in the case of Macau, as is well known, there are no political parties); and is the end-product of the will of an assembly that represents all voters. No element of the parliamentary legislative procedure may be concealed, further stressing that it is due to the successive parliamentary scrutiny and the successive technical reviews of the initiatives that many problems are detected and corrected — an assertion that is fully applicable to Macau, if one compares the original versions of the bills and the laws published in ‘Legislação no Século XXI. Uma perspectiva parlamentar’ (2009) 50 *Legislação* 163.

²⁹⁷ “Series II of the Legislative Assembly Bulletin comprises: a) The texts of the bills and of the draft resolutions, motions and simple deliberations of the Plenary; b) The final texts of the approved bills, resolutions and simple deliberations of the Plenary; c) The texts of petitions submitted to the Legislative Assembly; e) The reports of the committees on bills and draft resolutions, accompanied by the texts with amendments thereto, if such exist, as well as the remaining opinions, reports and memoranda requested from the committees; f) The Board’s deliberations and the President’s decisions with respect to the matters provided for in Articles 1, 2 and 3.” — a true principle of publicity is enshrined, not only with respect to the law — the procedural end-result, but also to the legislative procedure *per se*.

process.²⁹⁸

In the Rules of Procedure, references are made to legislative processes, opening with the so-called *common legislative process*, in my view a term to be viewed as a mere remnant from History.²⁹⁹

Herein are regulated, developed, and implemented the rules on the **legislative initiative** (power, form, exercise, areas/matters reserved thereto), the respective limits (organic, substantive, and formal), the procedure immediately following the stage of acceptance or rejection and the requirement of prior cognisance of the texts submitted to the Plenary.

Next, the Rules of Procedure deal with the **presentation and general debate**,³⁰⁰ the phases through which it unfolds and how it ends.

The subsequent step is that of **voting on the bill in general**, determining the object³⁰¹ and effects of such deliberation.

One then enters the crucial phase³⁰² of the **examination on the specifics of a bill in committee**, determining the object³⁰³ and the deadlines for such purpose.

Moving on to the **debate and voting on the specifics** of a bill, the object³⁰⁴ thereof is identified and established, eg special rules for the functioning of committees and on the order of voting.

In the event that no voting on the specifics nor the consequent final overall

²⁹⁸ Cf for an overview, António Katchi, *As Fontes do Direito em Macau* (Faculdade de Direito da Universidade de Macau 2006) 480.

²⁹⁹ Assuming that special legislative processes exist, which is not the current situation the MSAR. In the Rules of Procedure of the Legislative Assembly of the territory of Macau, in the pre-handover period, several special processes co-existed with the common legislative process, namely, Organic Statute, Legislative Authorisations, and Ratifications of Decree-Laws. The urgency process was available for any bill. In other words, this process is not special *vis-à-vis* the common process: it is but an acceleration of a legislative process, be it a common process or a special one. In addition, its systematic insertion is not the most apt (after all the legislative and supervisory processes), as was the case in the previous Rules.

³⁰⁰ The general debate concerns *the principles and the system* of each bill, as well as its *opportunity* from a political, social and economic point of view.

³⁰¹ It is said that voting on the whole *refers to each bill*, it is said. This alone does not clarify anything. We believe that the reference to the principles and the system of each bill must also be included here, inasmuch as said features shall be the object of the voting process, along with the bill's political, social and economic opportunity.

³⁰² Both in terms of lawmaking and in the praxis, which has been demonstrating how such procedural stage is crucial for the effective discussion of options and solutions, in addition to issues of true lawmaking in the technical-legal sense, ie draftsmanship, filling of *lacunae*, harmonisation of concepts, linkage with the legal order, under the principle of the unity of legal system, etc

³⁰³ The examination in committee consists of an assessment of the specific solutions contained in each bill, focusing, *inter alia*, on: a) The adequacy of such solutions with the principles and system of the bill approved on the whole; b) The search for the most appropriate legislative means for the proper execution of the bill; c) The repercussions of the bill on the principles and the legal order; d) The technical-legal perfection of the bill's provisions.

³⁰⁴ The debate and voting on the specifics of a bill *concerns each Article*. The President may decide to group more than one Article or, due to the complexity of the matter, the proposed amendments, or at the request of any Member, to conduct the debate on — and put to the vote — provisions by paragraphs or subparagraphs, thus allowing the taking of a political position on the options therein reflected.

voting³⁰⁵ in committee takes place, and in the absence of a new appraisal of a bill's text by a committee, one proceeds to the **final drafting** phase. The competence for that definitive drafting and confirmation of such final text is thus established: the committee drafts, and the President of the Legislative Assembly applies the confirmatory imprimatur.

Finally, under the Rules of Procedure, the *common and normal* legislative procedure closes with the **signature of the Chief Executive**. However, in exceptional situations as delineated in the Basic Law, an additional phase may transpire, namely, the **confirmation of a Member's (or Members') bill(s)**,³⁰⁶ in case the Chief Executive refuses to sign.

The above paragraphs outlined, very briefly, the complex and vast — and singular — common legislative procedure as regulated in the Rules of Procedure.

The urgency process, which may be adopted or applied to any bill or draft resolution under Article 155, does *not* constitute a *special* legislative procedure, considering what such procedures entail.³⁰⁷

4. In Conclusion: Centrality versus Completeness

Similar to the reality of most legal orders, the centrality — not synonymous with completeness, nor with primacy — of the Rules of Procedure of the Legislative Assembly is manifested in the legislative procedure, as seen above.

The emphasis on **centrality** is merited, primarily because this idea draws in and re-establishes the major principles and norms stemming from the constitutional order. Furthermore, such a notion allows for the development, implementation and completion of those fundamental principles and norms. It has proved to be a reliable tool for innovation, especially in establishing successive stages, actors, competences, deadlines, and deviations from the normal path. The journey commences with the superstructure of the legislative process, navigating towards the details and the filigree of the legislative procedure.

However, centrality should not be confused with completeness.

The Rules of Procedure do not aspire to a holistic, sealed-off or absolute completeness within the scope of the legislative procedure.

For instance, yet again, the Rules do not regulate the publication of the laws in the OG, nor do they determine that such publication is made in Series I (such matter is entrusted to the Law on the forms and templates of legal enactments), much less do said

³⁰⁵ It is an eventuality, because such will only happen if and when the option of voting on the specifics in committee is effectuated.

³⁰⁶ What about Government bills? I shall return to this subject later.

³⁰⁷ This urgency process does not constitute a special legislative process, as opposed to the common process — I reiterate that it is merely a means to accelerate a legislative process, be it a common process or, if such is available, a special one.

Rules establish that the Chief Executive is competent to send the laws for publication (a matter governed by the Basic Law).³⁰⁸ The Rules are also silent on the requirement of substantive and organic conformity with the Basic Law of bills and draft resolutions and deliberations, beyond the strict sphere of the legislative initiative (such matters are present in the Basic Law and in Law No. 13/2009).

Likewise, the Rules of Procedure do not contain an express rule regarding the limits to the legislative power of the MSAR's autonomy, within the People's Republic of China (Law No. 13/2009 directly establishes such limitation, when referring to the autonomy of the MSAR),³⁰⁹ nor do they refer to consultative mechanisms during the legislative process, in addition to the consultation of the Executive Council (such matters are governed in piecemeal legislation, such as the Legal Status of Lawyers, approved by Decree-Law No. 31/91/M, of 6 May 1991).

³⁰⁸ It is under this corrective lens that the general rule set out in Article 100, paragraph (1) of the Rules of Procedure should be read: "*The acts of the Legislative Assembly which, under the terms of the law, shall be published in the Official Gazette of the Macau Special Administrative Region, are sent to the Official Press by the President as soon as possible.*" In other words, the laws are necessarily outside the scope of such "acts": as per the provision Articles 50, paragraph (3), and 78 of the Basic Law — the competence for the publication of laws rests exclusively with the Chief Executive (see also Article 6 of the Law on forms and templates of legal enactments). In fact, a wording more in line with the Basic Law is Article 9, subparagraph (g) of the Rules of Procedure, which confers on the President of the Legislative Assembly the competence "*To order the publication, in the Official Gazette of the Macau Special Administrative Region, of resolutions, motions, simple deliberations by the Plenary and deliberations of the Board*": while wisely not mentioning the laws. Finally, one might again call out the "de-location" from the Rules, as set out in Article 85, paragraph (2).

³⁰⁹ See Article 5 of Law No. 13/2009.