
X.

THE ACCEPTANCE OF LEGISLATIVE INITIATIVES AND THE CONSULTATION AND HEARINGS OF ADVISORY AND COLLABORATIVE ENTITIES AND BODIES

1. The Acceptance of Legislative Initiatives

The common procedure of the original legislative initiative, indistinguishably applicable to both Government bills and Members' bills, consists, in essence, of the following: substantively, all bills shall contain the specific definition of the meaning/extent of the modifications to be introduced into the legal order, and, formally, all bills shall be presented in written form, expressed in Articles, with a designation succinctly identifying its principal object and be accompanied by an explanatory note,⁵⁶¹ Articles 107 and 108 of the Rules of Procedure. Non-compliance with such requirements results in the summary rejection by the President of the Legislative Assembly.

It should be noted that, with the exception of the first case, the neglect or omission of the aforementioned formalities is remediable within a non-extendable deadline set by the President, Article 108, paragraph (2) of the Rules of Procedure.

Such framework, as currently in force, is typified and fully comprehensive, thus not allowing for other criteria to be applied, namely merit, political suitability, or even the specific legal quality based on elements other than those duly and expressly stipulated in the Rules — such is clear, for a contrary view would render the system open to total and unrestricted discretion. The President of the Legislative Assembly acts as a quasi-notary public, vested in the role of formal and administrative guardianship of said specific norms of the Basic Law and of the Rules of Procedure.

Political judgments and other legal-technical assessments are postponed to later

⁵⁶¹ Bear in mind that the indispensable — not subject to any sort of waiver — procedural requirement of presenting an Explanatory Note may not conceptualised in a strictly formal or minimal way, ie such note cannot be deemed sufficient if it merely contains one or two paragraphs, without substantiating, explaining, justifying anything in substance. For example, it is not enough to replicate one or two norms of a Government bill and turn them into an explanatory note. From this common procedural requirement certain substantiveness must be perceivable from the document in question, otherwise not only would such requirement be defrauded, but also and the underlying normative teleology — to help lawmakers immediately understand the object and the opportunity of the bill.

moments, ie to be assessed by the Plenary and in the competent Committee.

Such, I repeat, is the formal framework in effect; naturally, though, the mandatory respect for the Basic Law — see Article 11 thereof — forces one to conclude that, *malgré* the apparent silence of the Rules, the President has, at his or her disposal, the possibility to reject a bill, or to return it for the purposes of reform, if such bill is in direct, unequivocal and manifest non-conformity with the Basic Law.

There are differences depending on whether the legislative initiative originates from Members or the Government.

2. External Consultations and Hearings

I cannot leave out a few words on the intervention of consultative bodies within the legislative procedure. It is not innovative, nor is it unique to Macau. Such intervention by third parties is a longstanding idea and is materialised in different legal orders — it constitutes a mark of participatory democracy.⁵⁶²

With respect to the hearing of certain bodies and entities, as a general rule, Government bills are subject to the intervention of the Executive Council. This involves a consultation process rather than a formal hearing, and it precedes the formal introduction of such bills to the Legislative Assembly.

One has to distinguish between bodies and entities that should, *in general*, be consulted, which have a *collaborative* nature or function, on the one hand, from those bodies and entities that constitute the Government's own consultative bodies, naturally available only to the Executive branch, on the other hand.

Alongside or beyond mandatory consultations and hearings, there may be — and, in fact, the parliamentary praxis points to such reality — optional consultations and hearings,⁵⁶³ which certainly may be held, or not. The initiative may be triggered either by the Committee entrusted with a given legislative process,⁵⁶⁴ or by a *general invitation*.⁵⁶⁵

⁵⁶² For a brief explanation and a historical-evolutionary note, Carlos Blanco Morais, *Curso de Direito Constitucional, I* (Coimbra Editora 2012) 402–403. Also, with interest, “if the summing of the entities is carried out before the drafting of a bill, the participation will be useful to collect data not yet taken into account. In a later moment, its importance will be, above all, directed towards correcting or amending certain aspects of the bill.”: 2015, 11, Manuel Andrade Neves, Nuno Sardinha Da Mata, and Inês Sequeira Mendes, *Contributos para a legística de expressão portuguesa* (Fundação Rui Cunha/CRED-DM 2015) 11.

⁵⁶³ Carlos Blanco de Morais, *Curso de Direito Constitucional I* (Coimbra Editora 2012) 401. The Author also alludes to individual and collective hearings. See, for example, regarding an individual hearing, FSC, Report No. 1/IV/2016, “Law on the prevention and correction of domestic violence”: “The Committee also received (legal) opinions (...) and University of Macau Professor Zhao Guoqiang, who was invited to personally present his views to the Committee at the meeting...”.

⁵⁶⁴ For example, see TSC, Report No. 4/ IV/2013, “Law on the Safeguarding of Cultural Heritage”: which states that the Committee, taking into account the scope of the proposal, decided to carry out a public consultation, with an appeal to media outlets.

⁵⁶⁵ See the Legislative Assembly's homepage, which maintains a permanent general invitation for submission

Bear in mind that, in external consultations and hearings, what is sought is the participation, an extension of involvement, a better knowledge — it is not possible, by such means, to effect a transfer of the right, the duty or the responsibility, either to decide, or to make a politico-legislative option, whatever such may be. An agreement or a disagreement with the outcome of a consultation or a hearing has no legal correlation with the act of decision-making or lawmaking *per se*.⁵⁶⁶

As a rule — once again, allow me to reiterate the special case of the Executive Council at an earlier stage *vis-à-vis* Government bills — consultations and hearings, for example with the MLA, should take place during the examination stage⁵⁶⁷ of the legislative procedure⁵⁶⁸ — as I shall develop further below, in the procedure that aims to enact laws in its *proper sense*, the task of examining bills essentially falls within the remit of the Legislative Assembly's committees.⁵⁶⁹

of opinions on bills; the website has a special colouring for residents (permanent and non-permanent and, in a corrective and extensive interpretation, non-resident persons, including legal persons). Later on I shall return to this theme.

⁵⁶⁶ Which does not mean that they should be, without due consideration, simply ignored, ie only serving as a means of expressing an illusory or apparent, merely formal participation, without substantive value. This is, of course, also true, in general, for all mandatory consultations. See eg, “*All these contributions were taken into due account by the Committee in the analysis of this Government bill of a structuring nature.*”: FSC, Report No. 3/III/2009, “*Legal framework governing the internal sources of legal norms*”; “*All these contributions were taken into due consideration by the Committee when analysing this complex and innovative Government bill*”: TSC, Report No. 4/III/2009, “*Prevention and Repression of Corruption in the Private Sector*”; “*It should, therefore, be mentioned that the final text is largely due to the suggestions and specific normative proposals presented by the MLA*”: SSC, Report No. 3/IV/2012, “*Amendments to the Commercial Registry Code*”; “*All opinions received were intended to contribute to the improvement of the legislative initiative and all were seriously considered by the Committee during the analysis of the Government bill*”: TSC, Report No. 3/IV/2013, “*Amendments to the Code of Criminal Procedure*”; “*It should also be noted that the Committee expressed its openness, as usual, to the contributions from civil society and the sectors involved by the future law. Thus, it is necessary to refer to a meeting held by the Committee with representatives of the various associations in the sector [...] those associations presented several opinions and suggestions, which deserved due consideration by the Committee.*”: FSC, Report No. 1/V/2014, “*Prevention and control of environmental noise*”; and “*The Committee thanks all the persons and entities who contributed with opinions and suggestions for the improvement of the Government bill, which was duly weighted.*”: FSC, Report No. 1/IV/2016, “*Law on the prevention and correction of domestic violence*”. It follows that, in principle, the written opinions received should be attached to the Committees' Reports and thus made readily available to the public. See moreover, “*The hearings may take place orally or in writing and the resulting suggestions and contributions should be the subject of an appropriate compilation and systematisation.*”: Manuel Andrade Neves, Nuno Sardinha Da Mata, and Inês Sequeira Mendes, *Contributos para a legística de expressão portuguesa* (Fundação Rui Cunha/CREDDM 2015) 11.

⁵⁶⁷ This aspect differentiates them (or should) from the so-called public consultations prior to the legislative initiative *per se*. Such public consultations are generic and indistinct, and are only intended to assist in the planning or policy-making of a non-legislative body, which has the power to trigger legislative procedures, but not the power to adopt legislative texts.

⁵⁶⁸ Carlos Blanco de Moraes, *Curso de Direito Constitucional I* (Coimbra Editora 2012) 405, José Melo Alexandrino, *Lições de Direito Constitucional*, vol II (AAF DL EDITORA 2015) 252–253, declaring that “the competent parliamentary committee is especially tasked with holding hearings and with conducting consultations.”

⁵⁶⁹ Cf José Melo Alexandrino, *Lições de Direito Constitucional*, vol II (AAF DL EDITORA 2015) 252. See also FSC, Report No. 1/IV/2016, “*Law on the prevention and correction of domestic violence*”: which reads: “*During the analysis of the Government bill, on the specifics, the Committee decided to collect the opinions of the various judicial operators – judicial magistrates, magistrates of the Public Prosecution Service and lawyers*

Continuing on these issues, a few observations on the Government's consultative bodies shall suffice.

3. Government Consultative Bodies

3.1 The Executive Council

In the case of legislative initiatives originating from the Government, the constitutional and procedural requirement that the Chief Executive consult the Executive Council before introducing bills to the Legislative Assembly, under Article 58 of the Basic Law, means that Government bills must be signed by the Chief Executive and contain the reference that the Executive Council has been consulted thereon, as per Article 103, paragraph (2) of the Rules of Procedure. In the event of non-compliance with the provision of said paragraph (2), the President shall return the bill to the Chief Executive, with the indication of the omitted formality, in accordance with paragraph (4) of said Article 103.

Naturally, such a requirement does not exist, nor would it logically be applicable, in view of Members' legislative initiatives, given that the Executive Council of the MSAR is the body: the end and function of which are to assist only the Chief Executive in decision-making, per Article 56 of the Basic Law.

The said Council is the sole government consultation body provided for in the Basic Law, and the only body from which prior consultation is required. This circumstance is duly reflected in the Rules, thus justifying its inclusion in the fully typified requirements for rejection of bills.

Besides this general procedural framework, there are specific cases that, under legal provisions, proceed to add requirements, namely the obligation to consult certain entities before the Government introduces bills to the Legislative Assembly, ie before formalising the legislative initiative.

— in compliance with the rules on the mandatory consultation of the Macau Lawyers Association, pursuant to paragraph 3) of Article 30 of Decree-Law No. 31/91/M, of 6 May, and the consultative powers granted to the Council of Judicial Magistrates and to the Council of Magistrates of the Public Prosecution Service, pursuant to paragraph 16) of Article 95 and paragraph 10) Article 107 of Law No. 10/1999, respectively.” Moreover, “The Macau Lawyers’ Association submitted an opinion, dated 27 February 2015, making an analysis of the bill’s text and presenting suggestions on legal drafting. The Council of Judicial Magistrates and the Council of Magistrates of the Public Prosecution Service did not formally express any opinion. However, on 17 February 17, 2015, the Chief of Staff of the Prosecutor forwarded to the Committee thirteen individual opinions of Magistrates of the Public Prosecution Service, presented without identification of authorship, the collection of which had been requested by order of the Prosecutor. On 6 November 2015, the President of the Committee received nine more personal opinions from unidentified Magistrates of the Public Prosecution Service, analysing amendments to the initial text of the bill, then under appraisal.” The novelty in the delivery of anonymous opinions, albeit from qualified persons (Magistrates of the Public Prosecution Service), is certainly noteworthy and raises doubts as to the appropriateness of their delivery and acceptance.

3.2 The Permanent Council for Social Dialogue

The Permanent Council for Social Dialogue, which fulfils the obligation to create an organisation for social dialogue of a consultative nature, comprises representatives from the Government, employers' associations and workers' associations. As referred to in Article 115 of the Basic Law,⁵⁷⁰ and under the terms of Decree-Law No. 59/97/M, of 29 December 1997,⁵⁷¹ the Permanent Council is tasked, *inter alia*, with issuing advisory opinions on bills and draft normative acts with social and labour implications.

A few clarifications are required.

Firstly, even though this Council is a constitutionally protected body, albeit in an indirect or presumed fashion,⁵⁷² — ie the Basic Law does not explicitly identify it, contrarily to the Executive Council — this tripartite and structurally consultative body may not be raised to a decision-making level, nor may it *usurp* the functions constitutionally granted to the Legislative Assembly,⁵⁷³ the Chief Executive, the Government or the Executive Council. Any attempt in this direction would result in an affront to the Basic Law in several of its principles and norms.

This Council embodies its defined role — neither more nor less. It operates as a socially supportive entity of an advisory nature in relation to a specific bundle of matters. Its consultation by the Government — not by the Legislative Assembly — is mandatory in such matters, but the opinions rendered are not binding.

Secondly, the requirement of consultation does not apply to Members' legislative initiatives. In effect, the Permanent Council for Social Dialogue is an organ for the Chief Executive's consultation on social and labour policy, as articulated in Article 1, paragraph (1) of Decree-Law No. 59/97/M. Like the Executive Council and other councils, this Permanent Council for Social Dialogue only provides consultation to the Chief Executive, and not to the Legislative Assembly, much less to individual Members.

⁵⁷⁰ “The Macau Special Administrative Region shall have an organisation for social dialogue of a consultative nature, comprising representatives of the Government, of employers' associations and of workers' associations.”: second paragraph.

⁵⁷¹ And of international labour law applicable in Macau.

⁵⁷² Some voices doubt whether this Council corresponds to the entity provided for in Article 115 of the Basic Law, “In addition, there is another problem that deserves to be taken into account – the body that has the advisory power in drafting legislation and implementing Government policies, namely, the functioning of the Permanent Council for Social Dialogue. Article 115 of the Basic Law of Macau specifically stipulates that the Macau Special Administrative Region has a consultative organisation of an advisory nature, consisting of representatives of the Government, employers' associations and workers' associations. In other words, a three-party consultative body that functions as an official advisory body. It is necessary to create this organisation in the Special Administrative Region so that it can perform its own functions, the objective of which is to make contacts, and reconcile relations between employers, workers and the Government. As to its nature, this body is advisory.”: Lok Wai Chong, ‘Lei Básica de Macau pós 1999 — sua influência na concertação social’ (1998) 39 *Administração* 32.

⁵⁷³ See, for example, “The Basic Law grants the competence to enact legislation exclusively to the Legislative Assembly of the future Administrative Region. Therefore, the responsibility for lawmaking in the field of labour relations lies with the Legislative Assembly of the future Administrative Region.”: Lok Wai Chong, ‘Lei Básica de Macau pós 1999 — sua influência na concertação social’ (1998) 39 *Administração* 32.

Consequently, and coherently, said Council may only issue opinions on its own initiative, or at the request of the Chief Executive, according to Article 2 of Decree-Law No. 59/97/M.

At no time does the Legislative Assembly, let alone Members thereof, request opinions from the Council. In other words, the issuance of an opinion on bills with social and labour implications only takes place at the request of the Chief Executive or on the Council's own initiative. No other avenue is allowed. Therefore, it is inescapable that this legal obligation to consult the Permanent Council for Social Dialogue only applies to bills initiated by the Government and not to bills initiated by Members.

In fact, the practice seems to point to the Government's regular compliance with this obligation to consult; for example, it will have occurred in the preparatory work leading to Law No. 12/2001, entitled "*Amends the legal framework for insuring work-related accidents and of occupational illnesses*". However, there appears to have been some exceptions, judging by the Explanatory Note, in which there was an omission of consultation. For example, in Law No. 9/2003, entitled "*Labour Procedure Code*", nothing is said about the prior consultation of the Permanent Council for Social Dialogue. Yet, it's important to note that in none of these cases was the lack of consultation of such Council deemed to constitute grounds for rejection of the respective Government bill.

With regard to Members' bills, naturally, there is no requirement for Members to engage in prior consultation with the Government's consultative body, the Permanent Council for Social Dialogue. As a matter of fact, the current practice conforms with such dispensation — several Members' bills on matters relating to trade unions were uncontestedly accepted for general debate in the Plenary, without the Permanent Council for Social Dialogue having been priorly heard thereupon.

Thirdly, it seems unassailable that the Legislative Assembly, although it should always attempt to remedy any possible illegality resulting from an omission to consult, does not have the power to summarily reject a legislative initiative by the Government requiring prior consultation of the Permanent Council for Social Consultation, in view of the typified framework established in Articles 107 and 108 of the Rules of Procedure — such an omission shall have the nature of a mere irregularity.

Stretching the argument further, into a bit of a non sequitur area, granted that there had to have been a prior consultation of said Council, what should be done is to proceed with the omitted consultation after the acceptance of the bill and, preferably, before the examination on the specifics thereof.

The duty to consult the Permanent Council for Social Consultation is addressed only to the Government, which is endowed with procedural and institutional mechanisms to hear and obtain advice from such — Government and not parliamentary — consultative body. In any event — mandatory initiative by the Government, or optional by the Members — it is possible to comply with this obligation to consult even *after a bill has been introduced* to the Legislative Assembly, namely during the stage of examination on

the specifics, if by simple error, or impossibility, the proponents did not comply with the legal obligation to hear/consult before introducing a legislative initiative.

3.3 Other Government Advisory Bodies

In addition to the previously identified councils, there is a wide range of other Government consultative and advisory bodies whose task is to provide opinion and assistance on Government legislative initiatives. A few of these Councils appear to be the addressees of mandatory consultation, whereas in other cases, prior consultation thereof is optional.

In no case may such councils be consulted by Members, nor does the omission of such consultations by the Government entail the summary rejection of the latter's bills. If such were not the case, an intolerable path, paved by a strong and profuse limitation to the legislative initiative would be opened (affecting both the Members and also the Chief Executive), with the total elimination of the instrument of political timing from the toolbox of lawmaking.

In addition, several of these cases of mandatory consultation are created by mere administrative regulations. They cannot be understood except in terms of the organisation of the Government's functioning.

Below is a sampling of these types of bodies.

4. The Consultative Council for Public Administration Reform

Administrative Regulation No. 18/2007 provides, in Article 5, that this Council is tasked with issuing opinions, reports, studies and making proposals on, *inter alia*, the legal framework of the Civil Service. The Council is an advisory body to the Government of the MSAR.

4.1 The Economic Council

The Economic Council, under the terms of Administrative Regulation No. 11/2000, performs consultative functions in the definition of economic development strategies and of economic policies in the MSAR. This Council is tasked, namely, to render its opinion on bills and draft normative acts regulating economic activity. The Economic Council is an advisory body to the Government of the MSAR.

4.2 The Council for Social Action

The Council for Social Action is competent, under the terms of Administrative Regulation No. 33/2003, to evaluate and to deliver opinions and recommendations, namely, on bills relating to the social action policy that the Government sees fit to submit for its appraisal. The Council is a consultative body that provides support to the Secretary responsible for

the area of social action, in view of the definition of the policies related thereto, as well as to assess the respective execution.

4.3 The Ethics Commission on Life Sciences

Decree-Law No. 7/99/M, of 19 February 1999, defines the composition and the competences of the Commission, which is a consultative body of the Chief Executive in matters of ethical issues raised by scientific progress, in the fields of biology, medicine, health, life sciences and biomedicine. The Commission must be consulted on the legal and regulatory measures to be adopted in the specific domain of its intervention, under the terms of Article 3, paragraph (2) of the aforementioned legislative act.

4.4 The Youth Council

The Youth Council is competent, under the terms of Administrative Regulation No. 12/2002, to issue opinions and to make recommendations, namely on bills and draft normative acts regarding youth policy that the Government sees fit to submit for its appraisal. The Youth Council is a consultative body that provides support to the Secretary who exercises competences in the area of youth policy.

In the MSAR legal order, several other Councils and Commissions should be consulted when taking normative initiatives. These Councils and Commissions are, *inter alia*, the Council for the Development of Tourism,⁵⁷⁴ the Consultative Council for Legal Reform,⁵⁷⁵ and the Fuels Safety Commission,⁵⁷⁶ among numerous other consultative and advisory bodies of the Executive branch.

5. Collaborative Entities and Bodies

There is a constellation of entities and bodies that are legally required to participate in the legislative procedure, offering consultive functions without orbiting the Government, ie not being typical Government consultative bodies. This is the case, for certain areas and matters, of the MLA as a public association, the Council of Judicial Magistrates and the Council of Magistrates of the Public Prosecution Service.

5.1 The Macau Lawyers' Association

The Legal Status of Lawyers, approved by Decree-Law No. 31/91/M, of 6 May 1991, as amended by Decree-Law No. 26/92/M, of 4 May 1992, and by Decree-Law No. 42/95/M, of 21 August 1995, establishes that the MLA shall be compulsorily heard on bills (or draft normative acts) which aim at regulating matters pertaining the judicial organisation, the

⁵⁷⁴ Article 3, paragraph [3] of Administrative Regulation No. 40/2011.

⁵⁷⁵ Chief Executive Order No. 59/2005.

⁵⁷⁶ Article 2 paragraph [9] of Administrative Regulation No. 38/2003.

practise of law, civil procedure and criminal procedure, pursuant to Article 30 of said decree-law. In such matters, the MLA's intervention is grafted onto the Legislative Assembly's general legislative procedure, as an additional step resulting from this specific legal imposition.

Doubts may arise as to the extent of this obligation concerning Members' bills and the correct moment for consulting the MLA — whether consultations should occur prior to or after the introduction of a bill to the Legislative Assembly? Or in a doubled scenario, when the MLA is consulted by the Government and *also* by the Legislative Assembly? Clearly, in the event of a Members' bill, consultations should not be formally carried out by individual Members, but rather by the institutional body Legislative Assembly, upon acceptance of the bill in question, either immediately, or at the outset of the examination on the specifics by a Committee.

It also seems undeniable that the Legislative Assembly, while obligated to remedy any possible illegality resulting from an omission to consult, does not have the power to summarily reject a legislative initiative by the Government requiring the prior consultation of the MLA, in view of the typified framework established in Articles 107 and 108 of the Rules of Procedure — such an omission shall have the nature of a mere irregularity.

On several occasions, instances have arisen where the MLA was not consulted before the introduction of Government bills, yet such omissions did not lead to the bills being rejected — a decision that, in retrospect, proved to be appropriate. This circumstance did not prevent the competent Committee, in the examination stage of the bill, from consulting the MLA. See, amongst many other examples, Law No. 9/2004, entitled, "Modifications, suppressions and addenda to the General Framework Law on the Judicial Organisation and to the Code of Civil Procedure" and the respective Report No. 2/II/2004 of the Third Standing Permanent Committee.

Similarly, in instances related to Members' bills such as Law No. 1/2009, entitled "Addendum to Law No. 21/88/M — 'Access to the Law and to the Courts'", and Law No. 16/2008, entitled "Amendment to Law No. 2/93/M — 'Right of Assembly and Demonstration'", the MLA was not consulted beforehand by the bill proponents. Nevertheless, the competent examining Committee did, in due course, consult that public association.⁵⁷⁷ This has been the common legislative practice in Macau.

5.2 Magistrates' Councils

The **Council of Judicial Magistrates** (composed of judges) is competent to "issue an opinion on bills relating to the General Framework Law on the Judicial Organisation and to the Legal Status of Magistrates" in addition to "studying and proposing the adoption of legislative or administrative measures geared towards the efficiency and the

⁵⁷⁷ See TSC, Report No. 2/III/2008.

improvement the judicial system.”⁵⁷⁸

5.3 The Council of Magistrates of the Public Prosecution Service

The Council of Magistrates of the Public Prosecution Service is competent to “issue an opinion on bills relating to the General Framework Law on the Judicial Organisation and to the Legal Status of Magistrates” in addition to “studying and proposing the adoption of legislative or administrative measures geared towards the efficiency and the improvement the judicial system.”⁵⁷⁹

The Legislative Assembly should always attempt to remedy any possible illegality resulting from an omission to consult, but does not have the power to summarily reject a legislative initiative by the Government, which omitted the due prior consultation of the Council of Judicial Magistrates and the Council of Magistrates of the Public Prosecution Service, in view of the typified framework established in Articles 107 and 108 of the Rules of Procedure — such an omission shall have the nature of a mere irregularity.

⁵⁷⁸ Article 95, paragraphs [15] and [16] of Law No. 10/1999.

⁵⁷⁹ Article 107, paragraphs [9] and [10] of Law No. 10/1999.