XII.
THE RENEWAL OF THE LEGISLATIVE INITIATIVE

1. Introduction to the Problem

An important, complex and controversial issue within the legislative procedure is the renewal of the legislative initiative — or rather, the rejection thereof, within a given period.

Such an issue was recently raised in relation to a specific case, having been the object of an advisory report[614] by the CRPMM.

This type of rules, as revealed, in the Rules of Procedure, under the wording "*The bills not approved or definitively rejected may not be renewed during the same legislative session*",[615] is quite common in constitutional history and in comparative law.[616]

Through Resolution No. 1/2015, which reviewed the Rules of Procedure of the Legislative Assembly, the text of Article 109 was amended.

The new procedure framework is thus expressed:

> *"1. The following may not be renewed during the same legislative session, under the same form of initiative:*
>
> *a) Members' bills not approved or definitively rejected;*
>
> *b) Government bills not approved or definitively rejected, without prejudice to the provisions of the Basic Law."*

This profound change is in deep disharmony with Macau's constitutional history and the teachings of comparative law.

The Explanatory Note of the Draft Resolution to Amend the Rules of Procedure of the Legislative Assembly contains the reasons for such change:

614 Report No. 1/V/2014, available on the official website of the Legislative Assembly.

615 Article 109, paragraph (1).

616 "It was an ancient rule that, when a bill was once passed or rejected, another of the same substance could not be brought in again during the same session": Paul Mason, *Mason's Manual of Legislative Procedure* (West Publishing Company 1989) 123–24. See also for the English system, Erskine May, *Parlamentary Pratice* (24th edn, Lexisnexis 2011) 333, "A motion or an amendment which is the same, in substance, as a question which has been decided during the session may not be brought forward again during that same session."

> "The issue of renewing the legislative initiative has been widely discussed within the Committee. Thus, and with regard to Article 109, more specifically, the scope of paragraph (1), many Members have sent opinions to the Committee, as well as suggestions for alterations to its wording, with a view to clarifying the scope of this norm and its relationship with the Government's powers in matters of legislative initiative. At the same time, the Committee undertook an analysis of the subject-matter — both scholarship and comparative law — concluding that there are norms similar to that of Article 109, paragraph (1) in the vast majority of the studied parliamentary rules of procedure, with the purpose of preserving procedural economy and dignity in the carrying out of parliamentary activity. However, the Committee considered that, in spite of the appropriateness of the principles underlying the norm of Article 109, paragraph (1), it is necessary to ponder its conformity with several norms of the Basic Law, namely, with Article 64, subparagraph (5) and with of Article 71, paragraph (1), according to which the Legislative Assembly is the sole body to 'Enact, amend, suspend and repeal laws', contrary to the Organic Statute of Macau, which enshrined, in its Article 5 that 'the legislative function shall be exercised by the Legislative Assembly and the Governor'. Such is what the Committee now proposes to do with the new text of Article 109, paragraph (1). Thus, the limits to the renewal of legislative initiatives are now restricted to the respective proponents, Members or Government. Therefore, when a Member's bill on a given subject is not approved or is definitively rejected in a legislative session, it can not be introduced again during the same legislative session. The same principle applies to the Government's bills; in other words, if a Government bill is not approved or definitively rejected in a legislative session, the Government cannot resubmit it to the Legislative Assembly during the same legislative session, without prejudice to the exceptional cases set out in Article 52, subparagraph (2) of Basic Law. The Committee believes that the new text of Article 109, paragraph (1) now proposed — which has achieved broad consensus within the Committee, and also by several Members not belonging thereto, who attended the respective meetings — respects the powers of the legislative initiative of both the Members and the Government."

In view of this new procedural understanding, doubts may be stirred — taking into account the praxis of little success in approving Members' bills and a high rate of approval of Government bills — whether this path might lead down a road of further degradation of the status of Members' bills. Even if substantively deserving of approval, there's a possibility that these bills could face more *free* rejection. The concern stems from the notion that if a matter truly warrants regulation under the law, the Government retains the ability to introduce a bill on the same subject matter at any time.

The reference to Article 64, subparagraph (5) of the Basic Law[617] is useless, as the general power of the Government to introduce bills may not be interpreted as being absolutely unrestricted, namely for the purposes of renewing initiative legislatives *vis-à-vis* certain timeframes, as has been occurring in Macau (and as is often the case in comparative law). In addition, if the new procedural norm is correctly read, such is what actually happens under Article 109, paragraph (1), subparagraph (b) (again, excepting the cases under Article 52 of the Basic Law).

Equally improper is the reference that nowadays, and, unlike the Organic Statute of Macau, under which "*the legislative function shall be exercised by the Legislative Assembly and the Governor*", the legislative competence in the MSAR lies only with the Legislative Assembly. What were the legal effects intended to be adduced from such a statement? That the Government may introduce bills, repeatedly and successively, until they are finally approved? That, after all is said and done, the Legislative Assembly only has the power to approve Government bills, but not the power to not approve them? No useful legally legitimising sense can be laid at the door of said declaration by the Committee.

I shall return to this subject below.

Under Article 52 of the Basic Law, an exception to Article 109 of the Rules of Procedure already prevailed *vis-à-vis* the previous text, which naturally applies to the current wording of Rules:

> "2) When the Legislative Assembly refuses to approve the budget bill introduced by the Government, or a bill that, in the opinion of the Chief Executive, affects the overall interests of the Macau Special Administrative Region, and if consensus still cannot be reached after consultations, the Chief Executive may then dissolve the Legislative Assembly."

In other words, to guarantee political stability, the right of suffrage and the results of elections — elements of a democratic nature present in Macau's political system — which normally should endure for a complete and an entire legislature, the use of dissolution, as the weapon of last resort, is avoided by a mechanism whereby such outcome must be preceded by consultations and reintroduction, to the Legislative Assembly, of the budget bill or the bill that affects the overall interests of the MSAR. This is a peculiar specimen of renewed legislative initiative, perhaps close to a "devolution". However, the MSAR requirements on a majority for approval remain exactly the same, as a specially qualified majority,[618] for example, of not less than two-

[617] "(5) Introduce bills and draft resolutions, and enact administrative regulations".

[618] Article 51 of the Basic Law: "If the Chief Executive of the Macau Special Administrative Region considers that a Member's bill approved by the Legislative Assembly is not compatible with the overall interests of the Region, he or she may return it to the Legislative Assembly within 90 days, for reconsideration, together with a written statement of the reasons for refusal of signature. If the Legislative Assembly confirms the original bill by not less than a two-thirds majority of all the Members, the Chief Executive must sign and order publication thereof within 30 days, or proceed in accordance with Article 52 of this Law."

thirds,[619] is unnecessary.

Having taken due notice of this constitutionally established exception, it is time to continue.

2. The Issue in Comparative Constitutional Law

Hereinafter are a few examples. In **Hong Kong**, LegCo's Rules of Procedure state:

> "51. Notice of Presentation of Bills
>
> (7)(a) Except as otherwise provided in subrule (7A) and Rule 66 (Bills Returned for Reconsideration), a bill which, in the opinion of the President, contains substantially the same provisions as another bill on which the Council has already taken a decision at second reading shall not be further proceeded with in the same session and shall be withdrawn."

In **Portugal**, Article 167 of the 2005 Constitution states:

> "Article 167 Initiative in relation to laws and referenda
>
> 4. Bills and draft referenda that are definitively rejected may not be resubmitted in the same legislative session, unless a new Assembleia da República is elected."

In **Azores**, Article 45 of the Political and Administrative Statute states:

> "Article 45 Regional referendum and legislative initiative
>
> 3 — Projects and proposals regarding regional legislative decrees or regional referendums that are definitively rejected may not be renewed within the same legislative session. ."

In **Madeira**, Article 45 of the Political and Administrative Statute states:

> "Article 45 Limits of initiative
>
> 2 — Bills on regional legislative decrees that have definitively been rejected may not be renewed during the same legislative session."

In **Cape Verde**, Article 144 of the Parliamentary Rules of Procedure states:

> "Article 144 (Renewal of the initiative)
>
> 3. Rejected bills may be renewed twelve months from the date of such rejection, unless it coincides with the end of the legislature."

In **East Timor**, Article 92 of the Parliamentary Rules of Procedure states:

619 On this issue, see Michael Ramsden and Stuart Hargreaves, *Hong Kong Basic Law Handbook* (1st edn Sweet and Maxwell 2015) 248.

> "Article 92 (Limits)
>
> 2. Bills that have been definitively rejected may not be renewed during the same legislative session."

In **Angola**, Article 179 of the Organic Law of the Functioning and Legislative Process) of the National Assembly states:

> "Article 179 (Limits)
>
> 2. Bills and amendment proposals that have been rejected may not be the object of renewed consideration during the same Legislative Session."

In **Argentina**, Article 81 of the Constitution states:

> "No bill totally rejected by one of the Houses may be renewed in that year's meetings."

In **Mexico**, Article 72 of the Constitution states:

> "g. No bill rejected in the House where it was initiated may be renewed in that year's meetings."

In **Uruguay**, Article 142 of the Constitution states:

> "When a bill has been firstly rejected by the House to which the other sends such bill, it shall by then be ineffective and may not be introduced until the following period of the Legislature."

In **South Korea**, Article 92 of the National Assembly Act of the Republic of Korea states:

> "Article 92 (Principle of Not Deliberating Same Bill Twice during Same Session), A bill which is rejected shall not be proposed or introduced again during the same session."

In **Bolivia**, Article 163 of the 2009 Constituion states:

> "The legislative procedure shall develop in the following manner: […] 9. A bill that has been rejected may again be introduced in the following Legislature."

Other examples could be identified, but it would be tiresome to reproduce the respective provisions. I would single out, *inter alia*, the following cases: Taiwan, South Africa, New Zealand, Italy and France.

As a rule, the accrued data points to a period of time coinciding with the duration of a legislative session. In other cases, this period of inhibition is limited to a given timeframe, regardless of its relation to the legislative session, for example, *x* months. There are also situations for alleviating the *cooling-off period*, by allowing the interdiction period to be removed, provided that such measure is approved by a qualified majority.

Other differences arise from the location or legal source of the norm: it may have a constitutional or a procedural provenance. In a few cases, the norm is contained in Constitutions (and/or the Statutes of autonomous regions); in other cases, it is established in both the Constitution and in parliamentary rules of procedure; finally, there exist cases, such as the HKSAR's and MSAR's, where this inhibition is an *ex novo* creation of the respective Rules of Procedure.

Rules such as these are indeed quite widespread in comparative law. As stated in the opinion of the CRPMM,

> "From the outset, this Article 109, paragraph (1) epitomises a norm for the organisation of legislative work that is generally common to other jurisdictions, whether these belong to the "common law" system, or to the civil law systems of the European continental model, as is the case of Macau."[620]

3. The Issue in Macau's Legal History

The idea of inhibiting the repetition of rejected initiatives is not a novelty in Macau Law, rather a principle that dates from afar in History.

In fact, the Rules of Procedure[621] previously in force before 1999 established the rejection of bills and amendment proposals *"the sole object of which are matters that have already been rejected by the Assembly"*[622] and, "*bills that have been definitely rejected may not be renewed during the same legislative session*".[623]

The refusal to countenance renewals of legislative initiative, in light of the previous procedural framework, has been thus described:

> "It has to do with the dignity and smooth operation of the Legislative Assembly and intends, among other purposes, to:
>
> - prevent the Legislative Assembly from tear and wear, with regard to definitively rejected bills;
> - prevent the Legislative Assembly from running the risk of approving, today, that which it rejected yesterday, and vice-versa;
> - ensure that there is, consequently, a smooth operation of the Legislative Assembly, allowing it to respond to the multiple concerns that may suitably arise from those whom the organ represents.

620 Report No. 1/V/2014.

621 One interesting point here is that while the Portuguese title of the Rules of Procedure before and after 1999 is the same "Regimento da Assembleia Legislativa"; the Chinese version varies vastly, "立法會章程" (Charter for Legislative Assembly) before 1999, and "立法會議事規則" (Rules of Procedure) after that.

622 Article 119, paragraph (1), subparagraph (d) of the Rules, Resolution 1/93/M.

623 Article 119, paragraph (2) of the Rules, Resolution 1/93/M.

> These are the reasonings that underpin the letter of the norm; this is the intended normative intent; we believe that this interpretation renders a better externalisation of the legislator's reasonable and meaningful will."[624]

In other words, this configuration, with a few differences, essentially corresponded to the framework in force until 2015, operating as an inhibitor, applied without distinction, of Members' bills and Government bills for the duration of a legislative session. The big distinguishing feature of the pre-handover norm is that it included a substantive benchmark — "*the sole object of which*" — absent from the Rules in effect since 20 December 1999.

What results is a temporal conditioning of the normal powers of legislative initiative. It does not represent a material invasion of the rules of initiative, but only a limitation that operates, in a limited way, during a given period of time. Such a rule exists in many and diversified legal orders, in the context of very different political systems, including those with a clear predominance of the Executive. Reasons for this are given and explained below.

4. The Current Controversy: A Few Contributions

The issue at hand has provoked many doubts and contradictory interpretations, to which strongly felt political factors are, in practice, added.

My analysis shall naturally skirt said political factors, neither endorsing nor opposing opinions of that nature.

As previously mentioned, a recent amendment to the Rules of Procedure of the Legislative Assembly altered the relevant norm in this matter, which had become a boiling issue in some circles. However, I shall maintain the chain of my arguments, keeping in line with the version in force prior to the approval of said Resolution, so that, at the end of this chapter, I may inject some brief comments about the new framework. The task ahead is to resume the previously constructed rationale.

Proceeding with a good and updated starting point, the aforementioned report of the CRPMM:[625]

> "This norm[626] is based on two essential principles: the principle of procedural economy and the principle of dignity and prestige of parliaments.[627] *The principle of procedural economy* translates into the

[624] Report No. 2/87, of the CRPMM of the Macau Legislative Assembly, dated 4 December 1987.
[625] Report No. 1/V/2014.
[626] "*Bills not approved or definitively rejected may not be renewed during the same legislative session*.": Article 109, paragraph (1) of the Rules of Procedure. Remember that this text was modified by Resolution No. 1/2015.
[627] See, on this matter, João Ramos, *A iniciativa legislativa parlamentar - A decisão de legislar* (Almedina 2005)

> understanding that a parliament should not go back on its deliberations, during a certain period of time (more or less short), on the assumption that if a new initiative on the same matter is accepted, such would obstruct normal activity, as it would oblige the parliament to a new — and possibly repeated — appraisal of normative contents previously considered and rejected. As to *the principle of dignity and prestige of parliaments*, such is related to the need to avoid the disrepute of legislative power: a reconsideration and a change of heart by parliamentarians about the same proposal, without a sufficiently minimal interval of time for a re-weighing of options having elapsed, may be detrimental to the dignity of the legislative body." (emphasis added)

And furthermore:

> "These principles also determine that the limitation contained in Article 109 of the Rules of Procedure may not operate when there is a mere formal identity between proposals, ie when they are based on a similar drafting, or even have, in the abstract, the same subject-matter. If such were the case, the *raison d'être* of inhibiting the renewal of initiatives, as identified above, would be distorted."

As for assessment criteria, "the criterion for the analysis of situations that constitute renewals of initiatives must be a substantive criterion that makes it possible to identify the normative or prescriptive meaning of the initiatives in question."[628]

What is meant by renewing a legislative initiative? A Member's bill may be renewed as a Government's bill and vice-versa. It is not enough, for example, to change the title or the internal structure of the Articles and introduce some aesthetic modifications, to defend that the new legislative initiative is different from the previous one. There is a substantive benchmarking to be made. The *rationale* for this rule of limiting renewals is self-evident — it is a corollary of the principle of equal dignity between a Member's bill and a Government's bill.

The above-quoted Report by the Committee on the Rules of Procedure and the Members' Mandate delves into the question of whether such procedural norm is in conformity with the Basic Law, pointing out the potential danger that

> "This may also additionally result in an evident misuse of Article 109 of the Rules of Procedure of the Legislative Assembly, thus opening the door to

[628] The same Report goes on, with a broad thesis, that "in order to ascertain whether or not there is a substantive identity between the two legislative initiatives under consideration, the answers obtained, namely, to the following questions, may be helpful: The norms contained in the new initiative seek to protect the legal reality in the same way as the rejected initiative? Do the norms go in the same direction? Does this initiative lead to the same result as the rejected initiative? Do such norms also protect, totally or partially, the object of the rejected initiative? If the rejected initiative had been approved, would there still be a need to introduce the new initiative? Does the initiative follow the same principles and philosophy as the rejected initiative? Would the changes to be made to the legal order by the second initiative be the same as those of the rejected initiative?".

> the limitation of the Government's power of legislative initiative [Article 64, subparagraph [5] of the Basic Law of the MSAR]. In fact, it would be enough for a Member to introduce a bill doomed in advance to failure (either for not obtaining sufficient political approval, or for insufficiency or inadequacy of the bill *per se*), in order to block any initiative, within the same scope, by the Government of MSAR during the same legislative session, through the application of the above quoted Article 109 of the Rules of Procedure."

Allow me to briefly render my opinion on this issue.

The question of misuse is, in the absence of supporting evidence, a false one. It is not a true impediment to the exercise of the Government's legislative initiative (or vice-versa, in reality). Article 109's functions are of a propaedeutic and a conservatory nature — of the dignity of the institution and its Members. In a given case, if the introduction of a *similar* Government bill to the Legislative Assembly is so imminent, it shall suffice that a prospective Member's bill awaits voting thereon, or that it is approved on the whole in such a way that the aforementioned Government bill is actually introduced. Such a Government bill should only be prevented from entering the legislative process if a similar Member's bill *fails* to pass. Otherwise, there is no impediment for the new Government bill to be admitted. Subsequently, for example, it is possible to conjoin both initiatives during the stage of examination on the specifics. The above is a plainly legal discourse.

On the alleged violation of the Basic Law, based on isolated interpretations of some norms, namely Articles 64, paragraph (5), and 75, I do not see the least legal reason to lean towards any idea of unconstitutionality (if such were the case, it would have constituted a non-compliance in a dormant state for about a decade and a half, by the hand of an MSAR organ…). The expression "*in accordance with legal procedures*", which has been referred to herein, time and again, which points to the ideas of the proceduralisation of lawmaking and to the existence of norms instituting parameters, is alluded to in several norms of the Basic Law. In Article 75, only Members' bills are mentioned, but in the remaining provisions, the framework applies to any law, whether it results from a Member's bill or from a Government bill — Article 64, subparagraph (5) is also and equally applicable. Allow me to recall that the expression is used, besides Article 75, in the *pinnacle* norm, Article 71: "*The Legislative Assembly of the Macau Special Administrative Region is competent to: 1) To enact, amend, suspend and repeal laws, under the terms of this Law and in accordance with legal procedures;*". Without distinction as to the origin of the legislative initiative.[629] Such is the same under Article 8 and Article 145.[630]

629 In practice, almost always originating from the Government.

630 By the way, in Article 2 of the Proposal to revise the Methodology for the Formation of the Legislative Assembly of the Macau Special Administrative Region, contained in Annex II of the Basic Law of the Macau

It is certainly not possible to deduce from the simplicity of the expression in Article 64, subparagraph (5) — "The Government of the Macau Special Administrative Region is competent: [...] 5) To introduce Government bills and draft resolutions, and enact administrative regulations; [...]" — that such could absolutely entail that no requirement could be attached to this power of initiative.

If it is not so, as I have tried to demonstrate — a different conclusion would be unreasonable. Imagine a Government bill on a matter that is absolutely outside the scope of the MSAR's autonomy, or another not accompanied by an Explanatory Note or not written in Articles. The power of legislative initiative is also constrained by legal procedures, mainly those contained in the Rules. In fact, this seems to be the same opinion expressed in said Report: when the possible question of violation of the Basic Law was raised, the document continued with the Committee's analysis and did not draw the necessary conclusion which, in the case in point, would have had to be the acceptance of the Government bill, thus removing the application of an unconstitutional procedural norm — which did not occur.

Another passage from the same Report calls for a more careful assessment. In fact, when insinuating that the norm of Article 109, paragraph (1), of the Rules of Procedure may not have fully respected the politico-legislative framework resulting from the Basic Law, while describing a difference *vis-à-vis* the framework established by the Organic Statute in force until 19 December 1999, by stating,

> "since the Governor had legislative competence, limiting the power to renew a rejected legislative initiative would not cause the Governor political and legislative problems, namely a deadlock in the approval of a given legislative act, since the Governor could always, on his/her own, enact Decree-Laws on the matters that were subject to a negative deliberation by the Assembly."

I must clarify that such was not the exactly the case. In fact, the report shows some awareness thereof in a footnote: "The Governor could always [do so], ie in matters not reserved to the Legislative Assembly."

The use of the expression "*could always*" is disproportionate and not duly expressive of the previous situation. Numerous matters were absolutely and relatively reserved for the Legislative Assembly's legislative competence. Moreover, although more limitedly, in parallel, the same de facto situation exists with the current independent administrative regulations, which may be enacted by the Government in matters not reserved to the law of the Legislative Assembly and under the terms provided for in Law

Special Administrative Region of the People's Republic of China, one encounters the same framework, with respect to matters within the scope of the Government's reserved legislative initiative:
"2. The provisions of the present proposal to revise of the methodology for the formation of the sixth Legislative Assembly and of the subsequent Legislative Assemblies are applied, until amendments thereto are approved in accordance with legal procedures."

No. 13/2009.

On a different level, that of political options, the question can certainly be posed.[631] This will lie in deciding if, politically speaking, the principle set out in Article 109 of the Rules of Procedure merits continuity or not — whether it should undergo modifications, adjustments, or be eliminated altogether in the future. There could be consideration for rendering the framework more flexible, similar to various other legal orders, where such a limit may be surpassed by a specially qualified majority.[632]

As aforementioned, an amendment was made to the Rules of Procedure, modifying the text of the norm in question.

A preliminary correction: the same Report omits that, while it was true that under the Organic Statute, the legislative function was exercised by the Legislative Assembly and the Governor, the same type of problems present in the Explanatory Note did exist before the handover — albeit to a lesser degree — which was the ample area of matters reserved to the Legislative Assembly's legislative competence (both absolutely and relatively).

In other words, the impediments or constraints resulting from the impossibility of renewing a legislative initiative by the Executive in these cases remained, and the Government could not use a Decree-Law within the wide range of matters reserved to the Legislative Assembly's legislative competence. This happened in the past, as it does today.

As for Articles 64, paragraph (5) and 71, there is nothing more to add — these norms in no way interfere with the legislative procedural framework.[633]

The sole *new* constitutional norm invokable, as a justification or with any relevance to the issue of renewing the legislative initiative, is Article 52, subparagraph (2), as we have already noted previously. Since such an exceptional norm was already established in the Basic Law, it was applicable before the amendment to the Rules of Procedure became effective.

This is what the new procedural framework means. That is, if a Government bill is not approved or is definitively rejected during a legislative session, the Government may not reintroduce such bill to the Legislative Assembly during the same legislative

631 As so happened, per Resolution No. 1/2015, Amends the Rules of Procedure of the Legislative Assembly.

632 What is inadmissible, in my view, is to institute a differentiation that jeopardises the equal formal dignity between both types of bills. What Resolution No. 1/2015 did was precisely draw a dividing line between these two forms of legislative initiative.

633 Some even tried to resort to Article 51 of the Basic Law however, it was a baseless argument. In fact, in addition to Article 132 (Second deliberation on Members' bills) of the Rules, under Article 51 the Legislative Assembly will have already accepted and approved a Member's bill, which the Chief Executive returns to the Legislative Assembly if he or she considers that such bill is not in accordance with the overall interest of the MSAR; see, moreover, Article 50, paragraph 3), read in conjunction with Article 51, both of Basic Law. The Legislative Assembly may confirm the approved initiative by a majority of not less than two-thirds of all the Members. Hence, what Article 51 of the Basic Law triggers is a process for confirmation of legislative initiative and not a renewal thereof, under Article 109 of the Rules. They are, absolutely and unmistakably, separate issues.

session, except in the exceptional cases set out in of Article 52, subparagraph (2) of the Basic Law.

This amendment adds little of substantive value to the legislative procedure on the specific issue of renewing the legislative initiative, when the latter originates from the same proponent (or repeatedly) — the textual language is "*under the same form of initiative*" — besides an explicit insertion of the exceptions directly contained in the Basic Law. Naturally, taking into account the legislative practice — approving Government bills and not approving Members' bills — this new modus operandi may result in an even greater practical prevalence of Government bills. From now on, the Plenary will be able to more easily reject a Member's bill on a given matter, with the full knowledge that, if such a matter is really important and requires urgent regulation, the Government will, in due course, introduce a bill, without any temporal limitations relative to the legislative session.

A final word on Resolution No. 1/2015 — it failed to *prima facie* maintain the symbolic status of parity between all bills, by establishing an apparent differentiation depending on the type of initiative and by specifying such distinction through the use of separate subparagraphs for Members' bills and Government bills.

5. Exceptions to the Restraints on the Renewal of Legislative Initiative

I have debated throughout the last few pages the general framework applicable to the inhibition of renewing legislative initiatives, formerly indistinguishable with respect to an initiative's internal or external origin, nowadays differentiating according to the initiative's provenance. An exception to this rule of inhibiting the renewal of legislative initiative has been admitted by legal scholarship[634] — notwithstanding the silence of the law and the Rules of Procedure — in the very special and understandable case of the budget law and other laws essential for the necessary functioning of the MSAR in certain financial matters, such as laws on MSAR sureties, guarantees and loans.

Indeed, it is perfectly understandable that, if a budget bill *fails* to be approved, it may — or should — be renewed, regardless of the constraints of the ongoing legislative session.

I also referred to the issue of Article 52, subparagraph (2) of the Basic Law, both in terms of budgetary laws and in terms of laws deemed to affect the overall interests of

[634] It is accepted that certain matters, "because of the variability of circumstances and the extreme relevance of financial matters for the functioning of the State": are outside the scope of the prohibition of renewing a bill: Jorge Miranda, *Manual de Direito Constitucional*, vol V (Coimbra Editora 2011) 284.

the MSAR.[635]

6. Lapse of Legislative Initiatives

In the context of the renewal of the initiative, although what is really at stake is the lapse thereof,[636] I should mention the rules laid down in Article 109, paragraph (2) of the Rules of Procedure:

> "Bills not voted on during the legislative session in which they were introduced do not require renewal in the subsequent legislative sessions, unless the legislature reaches its term, the Legislative Assembly is dissolved and, with respect to Government bills, the Chief Executive renounces to, or is removal from, his or office."

First rule, there is no need to renew an initiative until the term of a legislature. If a bill is introduced, it remains valid until the end of the legislature.[637] This extension of effectiveness extends throughout the legislature, thus it may include up to three legislative sessions, provided that they belong to the same legislature. This is different to that in Portugal, for example, an extension of up to a single legislative session is allowed.[638]

Second rule, the legislative initiatives lapse, following the same framework for all bills, when the legislature ends and when the Legislative Assembly is dissolved. For Government bills, a special exclusive framework applies — such bills lapse in case the Chief Executive renounces[639] to, or is removed from, his or her office.[640]

Such rule is important, insofar as the consequences for the legislative process of major events, such as the dissolution of parliament or the removal from office of the Chief Executive, are omitted in the Basic Law.

Are there other cases of lapse of a legislative initiative? For example, what if the Chief Executive resigns?[641] Or, in the most normal situations, when has his or her term of office elapsed?[642] Or if a new Chief Executive is selected due to the vacancy of the

635 Note that, in the Basic Law of Hong Kong, the corresponding Article 50 only refers to "*other important bill introduced by the government*". About this Article and its possible implications for parliament as a rubber stamp, under the power of the Chief Executive, Michael Ramsden and Stuart Hargreaves, *Hong Kong Basic Law Handbook* (1st edn Sweet and Maxwell 2015) 248–249.

636 Jorge Miranda, *Manual de Direito Constitucional*, vol V (Coimbra Editora 2011) 286.

637 With the start of a new legislature, it is always necessary to renew any initiative that may have lapsed. The political legitimacy of the Assembly is altered, Carlos Blanco de Morais, *Curso de Direito Constitucional I* (Coimbra Editora 2012) 445.

638 Article 167, paragraph (5), of the Portuguese Constitution: "Bills and referenda proposals not voted on in the legislative session during which they were introduced do not require renewal during the subsequent legislative session, unless the legislature reaches its term."

639 See the cases under Article 54 of the Basic Law.

640 See Article 15 and, in my view, Article 71, paragraph (7), first part, of the Basic Law.

641 See Article 71, paragraph (7) of the Basic Law.

642 Article 48 of the Basic Law. The continuation of the same officeholder or his or her replacement by a new holder can be verified, for example, at the end of two terms in office.

office?[643] Does it make sense that Government bills shall likewise automatically and immediately lapse under these scenarios? Or should the new leader of the MSAR remain bound to legislative proposals made by his or her predecessor? This does seem to be a reasonable solution, so I would argue for a possible analogical application to such cases of the procedurally established framework; additionally, such normative body of political legitimacy changes in all the explored examples and not only in the cases expressly regulated in the Rules.[644]

Turning to another angle of approach, if a Member, proponent of a given bill, renounces to his or her mandate, under the terms of Article 18 of the Legal Status of the Members, does it make sense to also apply thereto Article 109, paragraph (2) of the Rules of Procedure? And in the case of a Member's disqualification? And ditto in the event of incapacity (not mere temporary inability) to exercise one's mandate? In these situations, regulated under Articles 19 and 20 of the Legal Status of the Members, should the affected Member's bills also lapse?

Whenever a Member's mandate ceases, should his or her bills automatically and immediately lapse, by simple analogy with the framework applicable to Government bills?[645]

My answer is affirmative.

7. Cancellation and Adoption of Initiatives: Referral

There are two other aspects to consider: the cancellation of the initiative and the adoption of the initiative.[646] Both shall be analysed later, *apropos* the in-depth study of the common legislative procedure.

[643] Article 55, second paragraph of the Basic Law.

[644] The Rules of Procedure should also take into account changes in the holder of the office of Chief Executive, or the formation of a new Government, outside the cases of renunciation, resignation or removal from office, during a legislature. Such cases would also cause, as a rule, the lapse of the bills introduced by the previous Chief Executive and by the previous Government Or, at least, the new Chief Executive and the new Government would be required to formalise a will/intent to maintain a legislative initiative pending in the Legislative Assembly, thus signally the desire for it run its course. The idea is to exercise governmental powers and policy unbounded by the options of the former Executive; if such will/intent is not formally demonstrated, the bills should lapse.

[645] Jorge Miranda, *Manual de Direito Constitucional*, vol V (Coimbra Editora 2011) 286.

[646] Devoid of convincing reasons, the concept of adopting an initiative was expunged from the procedural normative fabric and killed off by Resolution No. 2/2017, which amended the Rules of Procedure of the Legislative Assembly.