

# National Parliaments

Argentina • Brazil • Portugal • Spain

Gulf Cooperation Council Countries

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# Argentina

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**SUMMARY** Under the National Constitution, Argentina has a representative, republican, and federal form of government. It is organized under three branches of government: executive, legislative, and judicial. The legislative branch is bicameral with a House of Deputies and a Senate. In general, laws originate in either house of Congress through bills introduced by its members or by the executive. Once approved by both houses, a bill is sent to the President for consideration, and if approved becomes law.

## I. Introduction

The current National Constitution of Argentina (Constitución Nacional, CN) was adopted in 1994, when the original 1853 National Constitution was amended.<sup>1</sup> The 1853 Constitution adopted a representative, republican, and federal form of government.<sup>2</sup> The government is organized into three branches: the executive, legislative, and judicial.<sup>3</sup> Under the federal system established by the Constitution, the provincial governments may legislate on subjects assigned to them by the CN, but the CN gives the federal legislature exclusive competence over other subjects.<sup>4</sup>

The executive power is headed by a President, a Vice-President, and Cabinet.<sup>5</sup> The legislative power consists of a bicameral Congress with a House of Deputies and a Senate,<sup>6</sup> and the judicial power is headed by the Supreme Court and includes all the court systems.<sup>7</sup>

The territory is divided in twenty-three provinces and the City of Buenos Aires. The provinces are Buenos Aires, Catamarca, Corrientes, Córdoba, Chaco, Chubut, Entre Ríos, Formosa, Jujuy, La Pampa, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta, San Juan, San Luis, Santa Cruz, Santa Fe, Santiago del Estero, Tucumán, and Tierra del Fuego.<sup>8</sup> Each province has its own constitution, which must provide for the administration of justice, municipal autonomy, and

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<sup>1</sup> CONSTITUCIÓN NACIONAL [CN], BOLETÍN OFICIAL [BO], Jan, 3, 1995, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>, archived at <https://perma.cc/S3BN-9NA3>.

<sup>2</sup> *Id.* art. 1; *Organización y Forma de Gobierno*, CASA ROSADA Y PRESIDENCIA DE LA NACIÓN, <https://www.caserosada.gob.ar/nuestro-pais/organizacion> (last visited Feb. 14, 2018), archived at <https://perma.cc/YA6G-AAVK>.

<sup>3</sup> CN arts. 44, 87, 108.

<sup>4</sup> *Id.* arts. 5, 6, 75, 121.

<sup>5</sup> *Id.* arts. 87–88.

<sup>6</sup> *Id.* art. 44.

<sup>7</sup> *Id.* art. 108.

<sup>8</sup> *División Política de Argentina*, INSTITUTO GEOGRÁFICO NACIONAL, <http://www.ign.gob.ar/NuestrasActividades/Geografia/DatosArgentina/DivisionPolitica> (last visited Feb. 14, 2018), archived at <https://perma.cc/YGG3-U9L6>.

elementary education within the principles and guarantees stated in the CN.<sup>9</sup> Each province also has the power to elect its own authorities—governor, legislators, and other provincial officers.<sup>10</sup>

The CN reserves powers not assigned to the federal government to the provinces.<sup>11</sup> The provinces are entitled to enter into international agreements, provided they comply with national foreign policy and do not interfere with the powers of the federal government.<sup>12</sup> They are also allowed to enter into partial treaties supported by the federal government for the purposes of the administration of justice, the local economy, and other public works.<sup>13</sup>

Provinces may not enter into partial treaties on political matters; enact commercial, interior, or exterior navigation laws; establish provincial customs; mint currency; create banks with currency issuance powers without the federal government’s authorization; dictate provisions of the Civil, Commercial, Criminal, and Mining Codes once they have been enacted by the National Congress; pass laws related to citizenship and naturalization, bankruptcy, currency forgery, or state documents; or appoint or receive foreign agents.<sup>14</sup>

## II. Parliament

The Legislative Power of the Nation is vested in a Congress composed of two houses—the House of Deputies and the Senate.<sup>15</sup>

### A. House of Deputies

The House of Deputies includes members directly elected by the people of the provinces and the City of Buenos Aires by a simple plurality of votes.<sup>16</sup> There is one deputy for every 33,000 people or a fraction not under 16,500 people.<sup>17</sup>

To qualify to become a member of the House of Deputies, a person must be twenty-five years old; have had full Argentinean citizenship for at least four years; and be a native of the province that he or she seeks to represent, or have resided in the province for two years immediately prior to seeking office.<sup>18</sup>

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<sup>9</sup> CN art. 5.

<sup>10</sup> *Id.* art. 122.

<sup>11</sup> *Id.* art. 121.

<sup>12</sup> *Id.* art. 124.

<sup>13</sup> *Id.* art. 125.

<sup>14</sup> *Id.* art. 126.

<sup>15</sup> *Id.* art. 44.

<sup>16</sup> *Id.* art. 45.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* art. 48.

A House of Deputies member's term is four years with the possibility of reelection; elections are held every two years for half the seats of the House.<sup>19</sup> In case of a vacancy outside of the normal election cycle, the government of the province must call for a special election for a new member.<sup>20</sup>

Bills on tax revenue and the recruitment of troops must be initiated exclusively in the House of Deputies.<sup>21</sup> The House of Deputies also has the exclusive authority to impeach the President, the Vice-President, the Chief of the Ministerial Cabinet, the Ministers, and the Justices of the Supreme Court for crimes committed while carrying out their duties, or for common crimes, once a decision to bring criminal charges has been made on a majority vote of two-thirds of members present; impeachment trials take place in the Senate.<sup>22</sup>

The last legislative elections to the House of Deputies were held on October 22, 2017.<sup>23</sup> There are 257 members. The political parties currently represented are as follows:

Cambiamos (ruling party) – 108

Frente para la Victoria (FPV) – 71

Partido Justicialista – 35

Frente Renovador – 23

Izquierda – 4

Others – 16<sup>24</sup>

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<sup>19</sup> *Id.* art. 50.

<sup>20</sup> *Id.* art. 51.

<sup>21</sup> *Id.* art. 52.

<sup>22</sup> *Id.* arts. 53, 59.

<sup>23</sup> *Las Elecciones Nacionales Tienen Fecha Confirmada: 13 de Agosto para las PASO y 22 de Octubre para las Generales*, CLARIN (Apr. 5, 2017), [https://www.clarin.com/politica/elecciones-nacionales-fecha-confirmada-13-agosto-paso-22-octubre-generales\\_0\\_HyYcxwMpx.html](https://www.clarin.com/politica/elecciones-nacionales-fecha-confirmada-13-agosto-paso-22-octubre-generales_0_HyYcxwMpx.html), archived at <https://perma.cc/6U42-NQM>.

<sup>24</sup> *Elecciones 2017: Así Quedará la Composición de la Nueva Cámara de Diputados*, IPROFESIONAL (Oct. 10, 2017), <http://www.iprofesional.com/notas/257614-congreso-diputados-cambio-resultados-gobierno-elecciones-kirchnerismo-peronismo-provincias-pj-10-de-diciembre-cambiamos-Elecciones-2017-asi-quedara-la-nueva-composicion-de-la-Camara-de-Diputados>, archived at <https://perma.cc/T2BJ-L433>.

## B. Senate

Three Senators are chosen from each province, and three from the City of Buenos Aires.<sup>25</sup> They are elected through direct vote, with two of the three seats assigned to the political party that received the highest number of votes and the other seat reserved for the political party with the second-highest number of votes.<sup>26</sup> Each Senator has one vote.<sup>27</sup>

To qualify to be a Senator a candidate must be thirty years old; have held Argentine citizenship for six years; and be a native of the province electing him or her, or have had two years of residency in the province immediately prior to seeking office.<sup>28</sup> Senators serve for six years and may be indefinitely re-elected. The Senate is renewed by one-third every two years.<sup>29</sup>

The Vice-President is the President of the Senate. He does not vote unless there is a tie.<sup>30</sup>

The Senate has exclusive authority to carry out the public trial of those impeached by the House of Deputies.<sup>31</sup> When the President is impeached, the Senate must be presided over by the Chief Justice of the Supreme Court.<sup>32</sup> Two-thirds of the members present are required to vote in favor of impeachment in order to render a conviction.<sup>33</sup> A judgement so rendered by the Senate only requires removal of the official from office and disqualifies him or her from holding any other office of honor, trust, or public remuneration in the nation.<sup>34</sup> However, the official will be subject to prosecution and punishment before ordinary criminal courts for crimes related to the impeachment.<sup>35</sup> The Senate also has the exclusive power to authorize the President to declare a state of siege in one or several areas in the case of an attack by a foreign power.<sup>36</sup>

In the event of vacancy because of death, resignation, or other grounds, the provincial government of the vacancy must immediately call for a special election in order to elect a new member.<sup>37</sup>

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<sup>25</sup> CN art. 54.

<sup>26</sup> *Id.* art. 55.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* art. 56.

<sup>30</sup> *Id.* art. 57.

<sup>31</sup> *Id.* art. 59.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* art. 60.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* art. 61.

<sup>37</sup> *Id.* art. 62.

The last legislative elections to the House of Deputies were held on October 22, 2017.<sup>38</sup> There are seventy-two senators. The political parties currently represented are as follows:

Cambiamos (ruling party) – 24

Frente para la Victoria (FPV) – 10

Partido Justicialista – 23

Others – 15<sup>39</sup>

### **C. Rules Common to Both Houses**

Both houses meet every year in ordinary legislative sessions from March 1 to November 30.<sup>40</sup> The President may call for extraordinary legislative sessions or extend the ordinary one, if needed.<sup>41</sup>

Each house may meet without an absolute majority of its members, but a smaller number may compel the absent members to attend the meetings, under the terms and penalties each house may provide.<sup>42</sup>

Each house adopts its own rules of procedure, and with the concurrence of two-thirds of its members may correct any one of its members for disorderly behavior in the exercise of the member's duties, or remove the member on physical or moral disability grounds, and may even expel him or her from the body.<sup>43</sup>

Both senators and deputies take an oath to duly perform their duties and to act in all matters in accordance with the provisions established under the CN.<sup>44</sup>

No member of Congress may be accused, interrogated in court, or otherwise disturbed for opinions expressed or speeches delivered by him or her while performing legislative duties.<sup>45</sup>

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<sup>38</sup> *Las Elecciones Nacionales Tienen Fecha Confirmada*, supra note 23.

<sup>39</sup> *Futura Cámara de Senadores 2017*, LA NACIÓN (Oct. 23, 2017), [http://elecciones2017.lanacion.com.ar/multi-media/proyectos/17/elecciones/elecciones\\_2017\\_gral\\_hemiciclo/?camara=senadores&fuerza=todas&prov=todas](http://elecciones2017.lanacion.com.ar/multi-media/proyectos/17/elecciones/elecciones_2017_gral_hemiciclo/?camara=senadores&fuerza=todas&prov=todas), archived at <https://perma.cc/D65V-VZY6>.

<sup>40</sup> CN art. 63.

<sup>41</sup> *Id.* art. 64.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* art. 66.

<sup>44</sup> *Id.* art. 67.

<sup>45</sup> *Id.* art. 68.

Senators and members of the House of Deputies have immunity from arrest while in office, except when caught *in flagrante* committing a crime deserving the most serious punishment.<sup>46</sup>

When criminal proceedings are initiated before ordinary courts against any senator or deputy, each house may suspend the accused member from office upon a vote of two-thirds of its members and place the accused member under the jurisdiction of the competent court.<sup>47</sup>

Either house may call members of the Cabinet for hearings in order to respond and explain matters related to their office as it may deem necessary.<sup>48</sup>

No member of Congress may be appointed to any civil office or commission under the executive power without the prior consent of the respective house.<sup>49</sup>

Neither regular members of the clergy nor governors while representing their own provinces may be members of Congress.<sup>50</sup>

Remuneration for Senators and Deputies is set by law and paid out of the National Treasury.<sup>51</sup>

A new law on gender parity passed in 2017 requires that political parties running for seats in Congress offer as many women candidates as men.<sup>52</sup>

#### **D. Powers of Congress**

According to the Constitution, Congress has the following powers:

1. To legislate on customs;
2. To impose indirect taxes concurrently with the provinces and direct taxes at the national level;
3. To set and modify tax allocations to the provinces with the [support of] an absolute majority of all the members of each house;
4. To borrow money on the credit of the Nation;
5. To manage the use and sale of national lands;

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<sup>46</sup> *Id.* art. 69.

<sup>47</sup> *Id.* art. 70.

<sup>48</sup> *Id.* art. 71.

<sup>49</sup> *Id.* art. 72.

<sup>50</sup> *Id.* art. 73.

<sup>51</sup> *Id.* art. 74.

<sup>52</sup> Ley 27412, Paridad de Género en Ámbitos de Representación Política [Gender Parity in Political Representation], BO, Dec. 15, 2017, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/300000-304999/304794/norma.htm>, archived at <https://perma.cc/DGR9-QV9G>.

6. To create and regulate a federal bank with currency issuance power as well as other national banks;
7. To resolve the domestic and foreign debt of the Nation;
8. To set the annual general national budget;
9. To provide subsidies from the National Treasury to provinces that are not able to cover their ordinary expenses through their own revenue;
10. To regulate navigation of inland rivers and ports;
11. To mint currency and regulate currency value;
12. To enact the Civil, Commercial, Criminal, Mining, Labor and Social Security Codes; as well as to enact general laws on immigration and naturalization, on bankruptcy, on counterfeiting of State currency and public documents, and on implementing the right to a jury trial;
13. To regulate international and inter-provincial trade;
14. To regulate the national postal service;
15. To settle national territorial boundaries;
16. To provide for border security;
17. To recognize ethnic and cultural rights of indigenous peoples of Argentina;
18. To provide for the prosperity of the country, for the advancement and welfare of all the provinces, and for the progress of education, promotion of industry, immigration, construction of railways, attraction of foreign capital, and exploration of inland rivers;
19. To provide for human development, economic progress with social justice, the growth of the national economy, the creation of jobs, the professional training of workers, the defense of currency value, scientific and technological research and development; [and] the protection of cultural identity and plurality;
20. To establish the court system;
21. To grant honors and general amnesties;
22. To accept or reject the resignation of the President or Vice-President, and call a new election when required;
23. To ratify or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. The following treaties and concordats have constitutional status: The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child. These treaties are treated as complementing constitutional rights and guarantees;

24. To legislate and promote equal opportunity and treatment for all, the full benefit and exercise of the rights recognized by this Constitution and by international treaties on human rights in force, particularly those related to children, women, the elderly, and the disabled;
25. To provide for a comprehensive social security system to protect especially children and the mother during pregnancy and the period of lactation;
26. To approve treaties of integration delegating powers and jurisdiction to supranational organizations under reciprocal and equal conditions, providing that democratic order and human rights are respected;
27. To authorize the Executive Power to declare war or peace;
28. To organize the Armed Forces in times of peace and war; and provide for their structure and government;
29. To authorize the entry of foreign troops into the territory of the Nation and authorize national troops to go abroad;
30. To declare the total or partial state of siege in case of a domestic disturbance, and to approve or suspend the state of siege declared by the Executive Power during a congressional recess;
31. To order the federal intervention of a province or of the City of Buenos Aires. To approve or revoke the intervention decreed by the Executive Power during its recess.
32. To pass the legislation needed to implement all the powers granted by the CN.<sup>53</sup>

Congress's legislative powers cannot be delegated to the executive power, except in the case of public emergencies for a limited time and according to the delegating conditions established by Congress.<sup>54</sup>

## **E. Legislative Process**

In general, laws originate in either house of Congress through bills introduced by its members or by the executive power.<sup>55</sup> Since a 1994 constitutional amendment, bills may be introduced through popular initiatives.<sup>56</sup> Bills amending the electoral system and those regulating political parties require an absolute majority of all the members of both houses in order to be approved.<sup>57</sup>

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<sup>53</sup> CN art. 75 (translation by author).

<sup>54</sup> *Id.* art. 76.

<sup>55</sup> *Id.* art. 77, para 1.

<sup>56</sup> *Id.* art. 39.

<sup>57</sup> *Id.* art. 77, para 2.

When a bill is passed by the house in which it originated, it is sent to the other house for debate.<sup>58</sup> Once approved by both houses, it is sent to the executive power for consideration, and if approved becomes law.<sup>59</sup>

After the general approval of a bill, each house may delegate the approval in detail of the bill to its committees on an absolute majority vote of its members.<sup>60</sup> Once a bill is approved by the committee, the ordinary procedures apply.<sup>61</sup>

Any bill not returned by the executive power within ten working days is considered approved.<sup>62</sup> When a bill is partially rejected, the remaining part may not be approved unless the provisions that were not rejected are self-executing and if their partial approval does not alter the spirit or the unity of the bill approved by Congress.<sup>63</sup>

No bill rejected in whole by either house may be reintroduced in the same year's legislative session.<sup>64</sup> If the bill was subject to additions and amendments by the reviewing house, the originating house may approve the bill with the additions or amendments made or insist on the original text, with an absolute majority of its members present, unless the additions or amendments were made by the reviewing house with two-thirds of those members present.<sup>65</sup> In such a case, the bill is referred to the executive power with the additions or amendments of the revising house, unless the originating house insists on the original text with the vote of two-thirds of the members present.<sup>66</sup> The originating house is not allowed to include new additions or amendments to those already made by the reviewing house.<sup>67</sup>

If a bill is vetoed in whole or in part by the executive power, it returns to the originating house with the objections.<sup>68</sup> If confirmed by a majority of two-thirds of the votes of the originating house after reconsideration, the bill returns to the revising house.<sup>69</sup> If both houses approve it by a two-thirds majority, the bill becomes law and is sent to the executive power for promulgation.<sup>70</sup>

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<sup>58</sup> *Id.* art. 78.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* art. 79.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* art. 80.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* art. 81.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* art. 83.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

# Brazil

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**SUMMARY** Pursuant to the Brazilian constitution, the Brazilian government is composed of the legislative, executive, and judicial branches. The Chamber of Deputies and the Federal Senate comprise the National Congress, which exercises its powers through the legislative process. The legislative process begins with the proposal of an ordinary or supplemental law. A bill approved by one Chamber must be reviewed by the other in a single round of discussion and voting. After being approved by the reviewing house, a bill is then sent to the President for final approval or veto.

## I. Introduction

Brazil is a federative republic formed by the indissoluble union of the states, the municipalities, and the Federal District, constituted as a legal democratic state founded upon sovereignty, citizenship, human dignity, social values of work and free enterprise, and political pluralism.<sup>1</sup> All power emanates from the people, who exercise it through elected representatives or directly, in accordance with the Constitution of October 5, 1988.<sup>2</sup> The legislative, executive, and judicial branches reflect the three independent and harmonious powers that together comprise the Brazilian government.<sup>3</sup>

## II. The Legislative Branch

### A. National Congress

The National Congress is a bicameral institution comprised of the Chamber of Deputies and the Federal Senate, pursuant to article 44 of the Constitution.<sup>4</sup> The National Congress exercises its power through the legislative process, which includes the preparation of amendments to the Constitution, supplementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees, and resolutions.<sup>5</sup>

#### 1. Powers

Article 48 of the Constitution determines that the National Congress has the power, with the approval of the President of the Republic (which is not required for subjects specified in

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<sup>1</sup> CONSTITUIÇÃO FEDERAL [C.F.] art. 1, [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm), archived at <https://perma.cc/J59E-YW87>.

<sup>2</sup> *Id.* art. 1(Sole para.).

<sup>3</sup> *Id.* art. 2.

<sup>4</sup> *Id.* art. 44.

<sup>5</sup> *Id.* art. 59.

constitutional articles 49, 51, and 52), to regulate all matters within the federal government's (*União*) jurisdiction, particularly

- I) the tax system, tax collection, and income distribution;
- II) multi-year plans, budgetary directives, annual budgets, credit transactions, public debt, and issuance of legal tender;
- III) determination and modification of the number of troops in the Armed Forces;
- IV) national, regional, and sectorial development plans and programs;
- V) national territorial boundaries, air and maritime space, and property owned by the federal government;
- VI) incorporation, subdivision, or division of areas of territories or states, after hearing from the respective Legislative Assemblies;
- VII) temporary transfer of the seat of the federal government;
- VIII) granting of amnesty;
- IX) administrative and judicial organization of the Public Prosecutor's Office [Ministério Público<sup>6</sup>] and Public Defender's Office [Defensoria Pública<sup>7</sup>] of the federal government and territories, and judicial organization of the Public Prosecutor's Office of the Federal District;
- X) creation, transformation, and termination of public offices, employment, and positions, observing what has been established in article 84(VI)(b) of the Constitution;
- XI) creation and termination of ministries and agencies of the public administration;
- XII) telecommunications and radio broadcasting;
- XIII) financial, foreign exchange, and monetary matters, as well as financial institutions and their operations;
- XIV) currency, limits on currency issuance, and the amount of federal indebtedness evidenced by bonds or other securities; and
- XV) determining the fixed compensation of Ministers of the Federal Supreme Court, observing what has been provided for in articles 39(§4), 150(II), 153(III), and 153(§2)(I).<sup>8</sup>

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<sup>6</sup> See *id.* arts. 127, 128, 129, 130. For more information on the Public Prosecutor's Office, see the Ministério Público website, at <http://www.mpu.mp.br/>, archived at <https://perma.cc/996V-MY8W>.

<sup>7</sup> C.F. art. 134. For more information on the Public Defender's Office, see the Defensoria Pública website, at <http://www.dpu.def.br/>, archived at <https://perma.cc/2J45-WNPZ>.

<sup>8</sup> C.F. art. 48 (all translations by author).

The National Congress has exclusive powers to

- I) decide definitively on international treaties, agreements, or acts that result in charges or commitments encumbering the national patrimony;
- II) authorize the President of the Republic to declare war, make peace, and permit foreign forces to pass through national territory or remain therein temporarily, with the exception of cases provided for by supplemental law;
- III) authorize the President and the Vice-President of the Republic to leave the country for more than fifteen days;
- IV) approve a state of defense or federal intervention, authorize a state of siege or suspend any of these measures;
- V) suspend normative acts of the Executive that exceed its regulatory authority or the limits of legislative delegation;
- VI) transfer its seat temporarily;
- VII) set identical fixed compensation for the Federal Deputies and Senators, observing the provisions of articles 37(XI), 39(§4), 150(II), 153(III), and 153(§2)(I);
- VIII) set the fixed compensation of the President and Vice-President of the Republic and Ministers of the federal government, observing the provisions of articles 37(XI), 39(§4), 150(II), 153(III), and 153(§2)(I);
- IX) review each year the accounts rendered by the President of the Republic and consider reports on the execution of plans of the government;
- X) supervise and control, directly or through either of its Chambers, acts of the Executive, including those of the indirect administration;<sup>9</sup>
- XI) safeguard the preservation of its legislative authority in face of the rulemaking powers of the other branches;
- XII) consider the acts granting and renewing concessions for radio and television broadcasters;
- XIII) select two-thirds of the members of the Audit Tribunal of the Union [Tribunal de Contas da União<sup>10</sup>];
- XIV) approve executive initiatives referring to nuclear activities;
- XV) authorize referenda and call for plebiscites;

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<sup>9</sup> Direct administration is considered to be the body of public administrative services exercised directly by the government (federal, state and municipal) through government organs, like ministries and secretaries, which are integrated into the structure of the executive branch. Indirect administration is the body of acts and services rendered by decentralized administrative agencies (*autarquias*) or public entities created by law in the exercise of their own activities or government functions, through delegation of the government. 1 MARIA HELENA DINIZ, DICIONÁRIO JURÍDICO 123, 124 (São Paulo, SP: Editora Saraiva, 2005).

<sup>10</sup> See C.F. arts. 71, 72, 73, 74. For additional information on the Audit Tribunal of the Union, see the Tribunal de Contas da União website, at <http://portal.tcu.gov.br/>, archived at <https://perma.cc/S5ZN-WQ34>.

XVI) authorize exploitation and use of water resources and the prospecting and mining of mineral wealth on indigenous lands; and

XVII) give prior approval for the alienation or concession of public lands with an area greater than 2,500 hectares.<sup>11</sup>

## 2. *Sessions of the Chamber of Deputies and Federal Senate*

The National Congress must meet in the federal capital from February 2 to July 17 and from August 1 to December 22 of each year.<sup>12</sup> Whenever sessions scheduled for these dates fall on Saturdays, Sundays, or holidays, they must be transferred to the next business day.<sup>13</sup> Legislative agendas for sessions of the Chamber of Deputies and Federal Senate can be tracked on their respective websites.<sup>14</sup>

In addition to other cases provided for in the Constitution, the Chamber of Deputies and the Federal Senate must meet in a joint session to

- I) inaugurate the legislative session;
- II) draw up common bylaws and regulate the creation of services common to both Chambers;
- III) receive the oath of office of the President and Vice-President of the Republic; and
- IV) acknowledge a veto and deliberate about it.<sup>15</sup>

Starting on February 1 of the first year of the legislature, each Chamber must meet in preparatory sessions to seat its members and elect its respective Executive Committees for a two-year term, prohibiting reelection to the same position in the next election.<sup>16</sup>

The Executive Committee of the National Congress is presided over by the President of the Federal Senate, and the other positions are held, alternately, by the occupants of equivalent positions in the Chamber of Deputies and the Federal Senate.<sup>17</sup>

Article 57 of the Constitution provides for those situations where extraordinary sessions of the National Congress may be called and who may call them.

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<sup>11</sup> C.F. art. 49.

<sup>12</sup> *Id.* art. 57.

<sup>13</sup> *Id.* art. 57(§1).

<sup>14</sup> *Agenda Legislativa*, CÂMARA DOS DEPUTADOS, <http://www2.camara.leg.br/atividade-legislativa/agenda> (last visited Jan. 4, 2018), archived at <https://perma.cc/PEA5-8863>; *Atividade Legislativa*, SENADO FEDERAL, <https://www25.senado.leg.br/web/atividade> (last visited Jan. 4, 2018), archived at <https://perma.cc/T65G-573B>.

<sup>15</sup> C.F. art. 57(§3).

<sup>16</sup> *Id.* art. 57(§4).

<sup>17</sup> *Id.* art. 57(§5).

Except where there is a constitutional provision to the contrary, the decisions of each Chamber and its committees must be made by a majority vote whenever an absolute majority of its members is present.<sup>18</sup>

### 3. Committees of the Chamber of Deputies and Federal Senate

The National Congress and both its chambers must have permanent and temporary committees (*Comissões Parlamentares*), constituted in the form and with the powers provided for in the respective bylaw or in the act of their creation.<sup>19</sup> In forming the Executive Committees and each Committee, proportional representation of political parties or parliamentary groups that participate in the respective Chamber must be assured to the extent possible.<sup>20</sup>

Committees, based upon the subjects over which they have jurisdiction (*competência*), have the power to

- I) discuss and vote on bills that, in accordance with the bylaws, do not require the authority of the entire body, unless an objection is made by one-tenth of the members of the Chamber;
- II) hold public hearings with entities of civil society;
- III) summon Ministers of the Federal Government to provide information on matters inherent to their duties;
- IV) receive petitions, claims, representations, or complaints from any person against acts or omissions of government authorities or public entities;
- V) request the deposition of any authority or citizen; and
- VI) examine construction programs and national, regional, and sectorial development plans, and issue opinions on them.<sup>21</sup>

The Chamber of Deputies currently has twenty-five permanent committees,<sup>22</sup> while the Senate has fourteen permanent committees.<sup>23</sup> In addition, the chambers have a number of joint committees,

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<sup>18</sup> *Id.* art. 47.

<sup>19</sup> *Id.* art. 58.

<sup>20</sup> *Id.* art. 58(§1).

<sup>21</sup> *Id.* art. 58(§2).

<sup>22</sup> *O Papel das Comissões Permanentes*, CÂMARA DOS DEPUTADOS, <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes> (last visited Jan. 4, 2018), archived at <https://perma.cc/NUD4-F7E8>.

<sup>23</sup> *Atividade Legislativa: Comissões*, SENADO FEDERAL, <http://legis.senado.leg.br/comissoes/?jsessionid=57861A3D502D7959B90F444761667E04?0#> (last visited Jan. 4, 2018), archived at <https://perma.cc/5NF8-YE3P>.

including among others joint committees on combatting violence against women, on climate change, and on intelligence activities,<sup>24</sup> and temporary committees.<sup>25</sup>

Among the temporary committees are Parliamentary Committees of Inquiry (Comissões Parlamentares de Inquérito, CPIs) that have the same investigative powers as judicial authorities in addition to other powers set forth in the bylaws of their respective chambers. Such committees must be created by the Chamber of Deputies and the Federal Senate, either jointly or separately, upon the request of one-third of its members, to investigate certain facts for a determined period of time. If appropriate, their conclusions must be forwarded to the Public Prosecutor's Office to determine whether to pursue civil or criminal liability of the offenders.<sup>26</sup>

During recess periods, the National Congress must be represented by a committee elected by its two chambers at the last ordinary session of the legislative term, with powers defined in common bylaws, and reflecting the proportional representation of the political parties to the extent possible.<sup>27</sup>

#### 4. Internal Rules

The Federal Senate, the Chamber of Deputies, and the National Congress have their own regulations, called Internal Regulations (*Regimentos Internos*), that define the procedures governing their operations, including the drafting and introduction of bills; discussions, deliberations, votes, sanctions, vetoes, and enactment; and the publication of new laws.<sup>28</sup>

### B. Chamber of Deputies

#### 1. Internal Regulation

The Internal Regulation of the Chamber of Deputies was designed to adjust the operation of the chamber to the legislative process provided for in the Constitution, and has the power of an ordinary law.<sup>29</sup> The Regulation addresses the rules and principles that guide the functioning of the institution. A complete copy of the Chamber's current Regulation is available online.<sup>30</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> For complete committee lists see *O Papel das Comissões Permanentes*, CÂMARA DOS DEPUTADOS, *supra* note 22, and *Atividade Legislativa: Comissões*, SENADO FEDERAL, *supra* note 23.

<sup>26</sup> C.F. art. 58(§3).

<sup>27</sup> *Id.* art. 58(§4).

<sup>28</sup> *O que é o Processo Legislativo?*, SENADO FEDERAL, <http://umapiruetaduaspiruetas.wordpress.com/brasil/perguntas-e-respostas-%E2%80%93-senado%20federal/>, archived at <https://perma.cc/DB7P-HBPX> (last visited Dec. 11, 2017).

<sup>29</sup> *Glossário*, CÂMARA DOS DEPUTADOS, <http://www2.camara.leg.br/glossario/r.html> (last visited Dec. 11, 2017), archived at <https://perma.cc/ZTK4-YC9C>.

<sup>30</sup> *Regimento Interno da Câmara dos Deputados*, CÂMARA DOS DEPUTADOS, [http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/18847/regimento\\_interno\\_18ed.pdf?sequence=68](http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/18847/regimento_interno_18ed.pdf?sequence=68) (last visited Dec. 11, 2017), archived at <https://perma.cc/YJ4N-U7XK>.

## 2. Composition and Powers

The Chamber of Deputies<sup>31</sup> is comprised of representatives of the people, elected in each state, each territory, and the Federal District by a proportional system.<sup>32</sup> The total number of Deputies, as well as the representation of each state/territory and the Federal District, is established by a supplemental law<sup>33</sup> in proportion to the population.<sup>34</sup> The necessary adjustments must be made in the year prior to the elections so that none of the units of the Federation has fewer than eight or more than seventy Deputies.<sup>35</sup> Each territory must elect four Deputies.<sup>36</sup> A list of current Deputies is available on the Chamber of Deputies' website.<sup>37</sup>

Except where there is a constitutional provision to the contrary, the decisions of each chamber and its committees must be made by a majority vote whenever an absolute majority of its members is present.<sup>38</sup>

The Chamber of Deputies has exclusive power to

- I) authorize, by two-thirds of its members, the initiation of legal charges against the President and Vice-President of the Republic and the Ministers of State;
- II) ask the President of the Republic to provide an accountability report, when it is not submitted to the National Congress within sixty days after the start of the legislative session;
- III) draft [the Chamber's] internal rules;
- IV) provide for its organization, operation, and police; the creation, transformation, or termination of offices, jobs, and positions in its services; and the initiation of bills of law setting the respective remuneration [for the positions created], observing the parameters established in the law of budgetary directives; [and]
- V) elect members of the Council of the Republic, according to the terms set out in article 89(VII) of the Constitution.<sup>39</sup>

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<sup>31</sup> CÂMARA DOS DEPUTADOS, <http://www2.camara.leg.br/> (last visited Dec. 11, 2017), archived at <https://perma.cc/4BKD-WXDN>.

<sup>32</sup> C.F. art. 45.

<sup>33</sup> Lei Complementar No. 78 de 30 de Dezembro de 1993, [http://www.planalto.gov.br/ccivil\\_03/Leis/LCP/Lcp78.htm](http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp78.htm), archived at <https://perma.cc/6VNJ-APLA> (regulating article 45(§1) of the Constitution regarding the number of federal deputies).

<sup>34</sup> C.F. art. 45(§1).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* art. 45(§2).

<sup>37</sup> *Conheça os Deputados*, CÂMARA DOS DEPUTADOS, <http://www2.camara.leg.br/deputados/pesquisa>, archived at <https://perma.cc/2UDF-HJSN> (last visited Dec. 11, 2017).

<sup>38</sup> *Id.* art. 47.

<sup>39</sup> *Id.* art. 51.

Bills of law and other proposals pending in the Chamber of Deputies may be researched and accessed via the Chamber's online database.<sup>40</sup>

## C. Federal Senate

### 1. Internal Regulation

The Federal Senate's Internal Regulation, published in two volumes, addresses the legislative process and the administrative functioning of the Senate.<sup>41</sup>

### 2. Composition and Powers

The Federal Senate<sup>42</sup> is comprised of representatives of the states and the Federal District, elected by majority vote.<sup>43</sup> Each state and the Federal District must elect three Senators for eight-year terms.<sup>44</sup> The representation of each State and the Federal District must be renewed every four years, alternately reelecting one-third and two-thirds.<sup>45</sup> Each Senator must be elected along with two alternates.<sup>46</sup> A list of current Senators is available on the Federal Senate's website.<sup>47</sup>

According to article 52 of the Constitution, the Federal Senate has exclusive power to

I) try for impeachable offenses the President and the Vice-President of the Republic; Ministers of the Union; and the Commanders of the Navy, Army, and Air Force;

II) try the offenses (*crimes de responsabilidade*) of the Ministers of the Federal Supreme Court, members of the National Council of Justice and the National Council of

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<sup>40</sup> *Projetos de Lei e Outras Proposições*, CÂMARA DOS DEPUTADOS, <http://www.camara.leg.br/buscaProposicoesWeb/pesquisaSimplificada>, archived at <https://perma.cc/5CRU-PL6W> (last visited Dec. 11, 2017).

<sup>41</sup> *Regimento Interno do Senado Federal* vols. I & II (2015 & 2016), <http://www25.senado.leg.br/web/atividade/regimento-interno/>, archived at <https://perma.cc/AU2B-G8CR> and <https://perma.cc/WQD4-EWFX>.

<sup>42</sup> SENADO FEDERAL, <https://www12.senado.leg.br/hpsenado>, archived at <https://perma.cc/FB97-X4K5> (last visited Dec. 11, 2017).

<sup>43</sup> C.F. art. 46.

<sup>44</sup> *Id.* art. 46(§1).

<sup>45</sup> *Id.* art. 46(§2).

<sup>46</sup> *Id.* art. 46(§3).

<sup>47</sup> *Senadores*, SENADO FEDERAL, <http://www25.senado.leg.br/web/senadores>, archived at <https://perma.cc/DWC9-7BH6> (last visited Dec. 11, 2017).

the Public Prosecutor's Office, the Attorney-General of the Republic [Procurador-Geral da República<sup>48</sup>], and the Attorney-General of the Union [Advogado-Geral da União<sup>49</sup>];

- III) give its prior approval, by secret ballot after a public hearing, on the selection of:
  - a) judges, in cases established in the Constitution;
  - b) Ministers of the Audit Tribunal of the Union nominated by the President of the Republic;
  - c) Governors of the territories;
  - d) the president and directors of the Central Bank;
  - e) the Attorney-General of the Republic; and
  - f) holders of other offices, as determined by law;
- IV) give its prior approval, by secret ballot, after closed hearing, on the selection of the heads of permanent diplomatic missions;
- V) authorize foreign financial transactions of interest to the Union, states, Federal District, territories, and counties;
- VI) establish, as proposed by the President of the Republic, global limits for the amount of the public debt of the Union, states, Federal District, and counties;
- VII) provide for global limits and conditions for the foreign and domestic credit transactions of the Union, states, Federal District, and counties, their agencies (*autarquias*), and other entities controlled by the Union;
- VIII) provide for limits and conditions on the concession of the Union's guarantee of foreign and domestic credit transactions;
- IX) establish global limits and conditions for the amount of the debt of the states, Federal District, and counties evidenced by bonds or other securities;

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<sup>48</sup> The Attorney-General of the Republic is the head of the Federal Public Prosecutor's Office (Ministério Público Federal) and performs the functions of the Public Prosecutor's Office in the Federal Supreme Court (Supremo Tribunal Federal, STF) and in the Superior Court of Justice (Superior Tribunal de Justiça, STJ), and is also the Electoral Attorney-General (Procurador-Geral Eleitoral). The Attorney-General of the Republic must always participate in all cases. In the STF, the Attorney-General of the Republic is entitled to propose direct actions of unconstitutionality, to request federal intervention in the states and the Federal District, and propose criminal and civil actions. In the STJ, the Attorney-General of the Republic may request federalization of cases of crimes against human rights and criminal action. *Procurador-Geral da República*, MPF, <http://www.mpf.mp.br/pgt/institucional/procurador-geral-da-republica> (last visited Dec. 12, 2017), archived at <https://perma.cc/DDR4-YH5V>.

<sup>49</sup> Pursuant to article 131 of the Constitution, "the Attorney General's Office is the institution that, directly or through a related body, represents the Union, judicially and extrajudicially, under the terms of the supplemental law that provides for its organization and functioning, [and] performs activities of consulting and legal advice to the executive branch." *Funções Institucionais*, ADVOCACIA-GERAL DA UNIÃO, [http://www.agu.gov.br/page/content/detail/id\\_conteudo/200643](http://www.agu.gov.br/page/content/detail/id_conteudo/200643) (last visited Dec. 12, 2017), archived at <https://perma.cc/3AEG-R3E8>. See Lei Complementar No. 73, de 10 de Fevereiro de 1993 [Supplemental Law No. 73 of February 10, 1993], [http://www.planalto.gov.br/ccivil\\_03/leis/LCP/Lcp73.htm](http://www.planalto.gov.br/ccivil_03/leis/LCP/Lcp73.htm) (last visited Dec. 12, 2017), archived at <https://perma.cc/2DQY-VHD5>.

- X) suspend enforcement, in whole or in part, of laws declared unconstitutional by final decision of the Supreme Federal Tribunal;
- XI) approve, by absolute majority and secret ballot, removal from office of the Attorney-General of the Republic before the end of his or her term of office;
- XII) draft [the Senate's] internal rules;
- XIII) provide for its organization, operation, and police; the creation, transformation, or abolition of offices, jobs, and positions in its services; and the initiation of laws setting the respective remuneration [for the positions created], observing the parameters established in the law of budgetary directives;
- XIV) elect the members of the Council of the Republic pursuant to article 89(VI); and
- XV) periodically evaluate the functioning of the structure and components of the National Tax System [Sistema Tributário Nacional<sup>50</sup>] and the performance of the tax administrations of the Union, states, Federal District, and counties.<sup>51</sup>

In those cases provided for in subsections I and II of article 52 of the Constitution (above) concerning the Federal Senate's exclusive powers, the President of the Federal Supreme Court must preside at the trial, a conviction may only be rendered by a two-thirds vote of the Federal Senate, and the penalty imposed must be limited to loss of office, with disqualification to hold any public office for a period of eight years, without prejudice to any other judicial sanctions that may be applicable.<sup>52</sup>

Bills of law and other proposals pending in the Federal Senate may be researched and accessed via the Senate's online database.<sup>53</sup>

### III. Elections

#### A. Generally

The President and the Vice-President of the Republic are elected simultaneously on the first Sunday of October for the first round, and on the last Sunday of October if there is a second round, of the year prior to the termination of the term of office of the current president.<sup>54</sup>

The Electoral Code determines that elections for federal deputies, senators, and alternates; president and vice-president; governors and lieutenant-governors; and state deputies are to happen

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<sup>50</sup> Law No. 5,172 of October 25, 1966, provides for the national tax system and general tax rules applicable to the Union, states, and municipalities. Lei No. 5.172 de 25 de Outubro de 1966, [http://www.planalto.gov.br/ccivil\\_03/Leis/L5172Compilado.htm](http://www.planalto.gov.br/ccivil_03/Leis/L5172Compilado.htm), archived at <https://perma.cc/A5L8-DKZK>.

<sup>51</sup> *Id.* art. 52.

<sup>52</sup> C.F. art. 52(Sole para.).

<sup>53</sup> *Atividade Legislativa*, SENADO FEDERAL, <http://www25.senado.leg.br/web/atividade> (last visited Dec. 11, 2017), archived at <https://perma.cc/EWX5-M4H8>.

<sup>54</sup> C.F. art. 77.

simultaneously throughout the country.<sup>55</sup> Only candidates registered by political parties can participate in elections.<sup>56</sup> No registration will be accepted less than six months prior to the election.<sup>57</sup>

## **B. Political Rights: Voting**

Popular sovereignty is exercised by universal suffrage and by direct and secret votes that have equal value for all (one man, one vote) and, as provided by law, by plebiscite, referendum, or popular initiative.<sup>58</sup> Voter registration and voting are compulsory for those over eighteen years of age and optional for the illiterate, those over age seventy, and persons aged sixteen and seventeen.<sup>59</sup>

The legal conditions for eligibility to vote are as follows:

- I) Brazilian nationality;
- II) full exercise of political rights;
- III) voter registration;
- IV) electoral domicile in the district;
- V) party affiliation; and
- VI) a minimum age of:
  - a) thirty-five years for President and Vice-President of the Republic, and Senator;
  - b) thirty years for Governor and Lieutenant-Governor of a state and the Federal District;
  - c) twenty-one years for Federal, State, or a District Representative, Mayor, Vice-Mayor, and Justice of the Peace; and
  - d) eighteen years for councilman.<sup>60</sup>

Foreigners and conscripts serving their period of compulsory military service may not register to vote.<sup>61</sup> Illiterate persons can vote, but cannot be elected.<sup>62</sup>

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<sup>55</sup> Lei No. 4.737, de 15 de Julho de 1965, art. 85, [http://www.planalto.gov.br/ccivil\\_03/leis/L4737compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/L4737compilado.htm), archived at <https://perma.cc/ED5K-8HEU>.

<sup>56</sup> *Id.* art. 87.

<sup>57</sup> *Id.* art. 87(Sole para.).

<sup>58</sup> *Id.* art. 14.

<sup>59</sup> *Id.* art. 14(§1).

<sup>60</sup> *Id.* art. 14(§3).

<sup>61</sup> *Id.* art. 14(§2).

<sup>62</sup> *Id.* art. 14(§4).

### C. Political Rights: Seeking Public Office

The President of the Republic, governors of the states and the Federal District, mayors, and those that have succeeded or replaced them in the course of their mandates may be reelected for a single, subsequent term.<sup>63</sup> In order to run for other offices, the President of the Republic, governors of states and the Federal District, and mayors must resign from their respective offices at least six months prior to the election.<sup>64</sup>

Spouses and relatives by blood or marriage up to the second degree, or by adoption, of the President of the Republic; the governor of a state, territory, or the Federal District; or a mayor, or those replacing them during the six months preceding the election, are ineligible to run for office in the jurisdictional territory of the incumbent, unless they already hold elective office and are candidates for reelection.<sup>65</sup> A member of the armed forces who can register to vote is only eligible to seek public office if he or she has served for less than ten years and takes leave from military activities; in cases of service over ten years, he or she must be discharged from military duties and, if elected, must be automatically retired upon taking office.<sup>66</sup>

A supplemental law<sup>67</sup> establishes other cases of ineligibility and periods for which such ineligibility must remain in force, in order to protect administrative probity, morality (considering the past life of the candidate), and the normality and legitimacy of elections from the influence of economic power or abuse from holding an office, position, or a job in the direct or indirect administration.<sup>68</sup>

Elective mandates may be challenged in the Electoral Courts within a period of fifteen days after certification of an election, with supporting evidence of abuse of economic power, corruption, or fraud.<sup>69</sup> A suit challenging a mandate must be processed in closed proceedings (*segredo de justiça*), and the plaintiff must be held liable, as provided by law, if the suit lacks cause or is proposed in bad faith.<sup>70</sup>

Deprivation of political rights is forbidden; the loss or suspension of such rights may occur only in cases of

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<sup>63</sup> *Id.* art. 14(§5).

<sup>64</sup> *Id.* art. 14(§6).

<sup>65</sup> *Id.* art. 14(§7).

<sup>66</sup> *Id.* art. 14(§8).

<sup>67</sup> Pursuant to article 14(§9) of the Constitution, Supplemental Law No. 64 was enacted to establish the cases of ineligibility, periods for termination, and other provisions. Lei Complementar No. 64, de 18 de Maio de 1990, [http://www.planalto.gov.br/ccivil\\_03/Leis/LCP/Lcp64.htm](http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp64.htm), archived at <https://perma.cc/NLN3-D25U>.

<sup>68</sup> C.F. art. 14(§9).

<sup>69</sup> *Id.* art. 14(§10).

<sup>70</sup> *Id.* art. 14(§11).

- I) cancellation of naturalization by a final, unappealable judgment;
- II) absolute civil incapacity;
- III) a final, unappealable criminal conviction, for so long as its effects remain in force;
- IV) refusal to comply with an obligation imposed upon everyone or to perform alternative service, in accordance with article 5(VIII) of the Constitution; and
- V) administrative impropriety, in accordance with article 37(§4) of the Constitution.<sup>71</sup>

Laws altering the electoral process enter into force on the date of their publication but do not apply to elections that occur within one year from that date.<sup>72</sup>

## IV. The Legislative Process

### A. Generally

The legislative process may be initiated with the proposal of an ordinary or supplemental law (a bill of law) by any member or committee of the Chamber of Deputies, Federal Senate, or National Congress; the President of the Republic; the Federal Supreme Court and Higher Federal Courts; the Attorney General of the Republic; or by any ordinary citizen in the manner and cases provided for in the Constitution.<sup>73</sup>

A bill approved by one Chamber must be reviewed by the other in a single round of discussion and voting.<sup>74</sup> If the reviewing Chamber approves the bill, it must be sent for enactment or promulgation, or if it is rejected, it must be archived.<sup>75</sup> If a bill is amended, it must return to the Chamber that initiated it.<sup>76</sup>

After being approved by the reviewing house, a bill is then sent to the President for final approval or veto.<sup>77</sup> If approved by the President, it becomes law forty-five days after its publication in the Official Gazette (*Diário Oficial*),<sup>78</sup> or within the period of time established in the bill.

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<sup>71</sup> *Id.* art. 15. Article 37(§4) of the Constitution determines that acts of administrative impropriety must result in suspension of political rights, loss of public office, freezing of assets, and reimbursement to the public treasury, in the form and degree provided by law, without prejudice to the appropriate criminal action.

<sup>72</sup> C.F. art. 16.

<sup>73</sup> *Id.* art. 61.

<sup>74</sup> *Id.* art. 65.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* art. 65(Sole para.).

<sup>77</sup> *Id.* art. 66.

<sup>78</sup> Decreto-Lei No. 4.657, de 4 de Setembro de 1942, art. 1, [http://www.planalto.gov.br/ccivil\\_03/Decreto-Lei/Del4657compilado.htm](http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del4657compilado.htm), archived at <https://perma.cc/W6RB-BC7W>.

The President may veto a bill of law in whole or in part if he or she considers it unconstitutional or contrary to the public interest.<sup>79</sup> The veto must occur within fifteen working days, counted from the date of receipt, and the President must inform the President of the Senate of the reasons for his or her veto within forty-eight hours.<sup>80</sup> According to article 66, section 3, after a period of fifteen days has elapsed, silence on the part of the President of the Republic operates as an approval.<sup>81</sup>

Pursuant to article 66, section 4, of the Constitution, a presidential veto must be examined in a joint session within thirty days from the date of receipt by Congress, and may be rejected only by an absolute majority of the Deputies and Senators.<sup>82</sup> Per article 66, section 5, if the veto is not upheld, the bill is sent to the President for promulgation.<sup>83</sup> If the period for examination lapses without a vote, the veto must be placed on the order of the day for the immediate session, suspending all other proposals, until its final vote.<sup>84</sup> If the law is not promulgated by the President of the Republic within forty-eight hours in the situations set out in article 66, sections 3 and 5 (discussed above), the President of the Senate must promulgate it, and if he does not do so within the same period, it is incumbent upon the Vice-President of the Senate to do so.<sup>85</sup>

The matter in a rejected bill of law may only be the subject of a new bill during the same legislative session upon proposal of an absolute majority of the members of either chamber of the National Congress.<sup>86</sup>

## **B. Amendments to the Constitution**

Constitutional amendments may be proposed by

- I) at least one-third of the members of the Chamber of Deputies or the Federal Senate;
- II) the President of the Republic; and
- III) more than one-half of the Legislative Assemblies of the Federation, each manifesting its decision by a simple majority of its members.<sup>87</sup>

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<sup>79</sup> C.F. art. 66(§1).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* art. 66(§3).

<sup>82</sup> *Id.* art. 66(§4).

<sup>83</sup> *Id.* art. 66(§5).

<sup>84</sup> *Id.* art. 66(§6).

<sup>85</sup> *Id.* art. 66(§7).

<sup>86</sup> *Id.* art. 67.

<sup>87</sup> *Id.* art. 60.

The Constitution cannot be amended during a federal intervention,<sup>88</sup> a state of defense,<sup>89</sup> or a state of siege.<sup>90</sup> A proposed amendment must be debated and voted on in each Chamber of the National Congress in two rounds, and must be considered approved if it obtains three-fifths of the votes of the respective members in both rounds.<sup>91</sup> A constitutional amendment must be promulgated by the Executive Committees of the Chamber of Deputies and Federal Senate, taking the next sequential number.<sup>92</sup>

No proposed constitutional amendment may be considered that is aimed at abolishing

- I) the federalist form of the National Government;
- II) direct, secret, universal, and periodic suffrage;
- III) separation of powers; or
- IV) individual rights and guarantees.<sup>93</sup>

The subject of a defeated or prejudiced proposal for a constitutional amendment may not be made the subject of another proposed amendment in the same legislative session.<sup>94</sup>

### C. Ordinary and Supplementary Laws

As noted above, any member or committee of the Chamber of Deputies, Federal Senate, or National Congress; the President of the Republic; the Federal Supreme Court or the Superior Tribunals; the Attorney General; or any ordinary citizen, is competent to initiate a supplementary or ordinary law.<sup>95</sup> The reason for the existence of supplementary law is that the legislators who drafted the Constitution understood that certain matters, despite their obvious importance, could not be regulated in the Constitution itself. Only the subject matter exhaustively provided for in the Constitution can be subject to supplementary law. All other matters must be the subject of

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<sup>88</sup> “Federal intervention” is the exceptional interference, within the limits imposed by the Constitution, of the Union (*União*) in the states, temporarily excluding the prerogatives of state autonomy, with the aim of: defending the federation and protecting federated units from situations that endanger the national integrity and public order; repelling a foreign invasion or the invasion of one state into another state; ensuring the free exercise of any of the states’ powers; reorganizing state funds; providing for the enforcement of federal law; or requiring observance of constitutional principles. 2 MARIA HELENA DINIZ, *DICIONÁRIO JURÍDICO* 1042, 1043 (São Paulo, SP: Editora Saraiva, 2005).

<sup>89</sup> Article 136 of the Constitution defines “state of defense” as an exceptional measure decreed by the President of the Republic, after consulting the Council of the Republic and the Council of National Defense, to preserve or promptly restore, in restricted and determined places, public order or social peace where the country is threatened by serious and imminent instability or hit by major natural disasters. C.F. art. 136.

<sup>90</sup> C.F. art. 60(§1).

<sup>91</sup> *Id.* art. 60(§2).

<sup>92</sup> *Id.* art. 60(§3).

<sup>93</sup> *Id.* art. 60(§4).

<sup>94</sup> *Id.* art. 60(§5).

<sup>95</sup> *Id.* art. 61.

ordinary law.<sup>96</sup> In addition, while an ordinary law must be approved by a simple majority,<sup>97</sup> approval of a supplementary law requires an absolute majority.<sup>98</sup>

#### **D. Provisional Measures**

In relevant and urgent cases, the President of the Republic may adopt provisional measures that have the force of law. Such measures must be submitted immediately to the National Congress.<sup>99</sup> Provisional measures may not be enacted on matters

- I) with respect to:
  - a) nationality, citizenship, political rights, political parties and electoral law;
  - b) criminal law, criminal procedure and civil procedure;
  - c) organization of the Judiciary and the Public Prosecutor's Office, as well as the careers and guarantees of their members; and
  - d) multi-year plans, budgetary directives, the budget, and additional and supplementary credits, except as provided for in article 167(§3) of the Constitution;
- II) that deal with the detention or sequestration of property, savings, or any other financial assets;
- III) that are reserved for supplementary law; and
- IV) that have already been regulated in a bill approved by the National Congress that is awaiting approval or veto of the President of the Republic.<sup>100</sup>

With certain exceptions, provisional measures lose their effectiveness as of the day of their issuance if they are not converted into law within a period of sixty days, which period may be extended for an additional sixty days.<sup>101</sup> It is the responsibility of the National Congress to regulate, by legislative decree, the legal relations stemming from such measures.<sup>102</sup> The sixty-day period starts to run from the date of publication of the provisional measure.<sup>103</sup> The running of this period is suspended during those periods in which the National Congress is in recess.<sup>104</sup>

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<sup>96</sup> ALEXANDRE DE MORAES, DIREITO CONSTITUCIONAL 624, 625, 20th Ed. (Editora Atlas S.A., 2006).

<sup>97</sup> C.F. art. 47.

<sup>98</sup> *Id.* art. 69.

<sup>99</sup> C.F. arts. 62(§3), (§7), (§11), (§12).

<sup>100</sup> *Id.* art. 62(§1).

<sup>101</sup> *Id.* art. 62(§3).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* art. 62(§4).

<sup>104</sup> *Id.*

In addition, a provisional measure that involves the institution of or an increase in taxes, except as provided for in constitutional articles 153(I) (import of foreign products), (II) (export to other countries of national or nationalized products), (IV) (industrialized products), (V) (credit transactions, foreign exchange operations, insurance, or transactions relating to negotiable instruments or securities), and 154(II) (authorizing the Union to impose extraordinary taxes at the imminence or in the case of external war), may only produce effects in the following fiscal year if it has been converted into law by the last day of the fiscal year in which it was issued.<sup>105</sup>

The deliberation of each of the chambers of the National Congress on the merits of a provisional measure is contingent upon a prior judgment as to the measure's compliance with constitutional requirements.<sup>106</sup>

If a provisional measure has not been considered within forty-five days, the provisional measure is given "urgent" status. Subsequently, in each of the chambers of the National Congress, all other legislative deliberations of the chamber to which the measure was presented must be suspended until it is finally voted upon.<sup>107</sup>

The effectiveness of a provisional measure may be extended once for sixty days, if during the initial sixty-day period it has not been submitted to a final vote in the two chambers of the National Congress.<sup>108</sup> Provisional measures must be voted on first in the Chamber of Deputies.<sup>109</sup>

A mixed commission of Deputies and Senators has the duty to examine provisional measures and to issue an opinion about them, prior to their consideration in separate sessions by the full membership of each chamber of the National Congress.<sup>110</sup>

Reenactment in the same legislative session of a provisional measure that has been rejected or that has lost its efficacy by the running of time is forbidden.<sup>111</sup>

If a bill to convert or modify the original text of a provisional measure has been approved, the provisional measure must be maintained in force in its entirety until the bill is signed or vetoed.<sup>112</sup>

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<sup>105</sup> *Id.* art. 62(§2).

<sup>106</sup> *Id.* art. 62(§5).

<sup>107</sup> *Id.* art. 62(§6).

<sup>108</sup> *Id.* art. 62(§7).

<sup>109</sup> *Id.* art. 62(§8).

<sup>110</sup> *Id.* art. 62(§9).

<sup>111</sup> *Id.* art. 62(§10).

<sup>112</sup> *Id.* art. 62(§12).

# Portugal

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**SUMMARY** The Portuguese Constitution defines the bodies that exercise sovereign power in the country, which include the President of the Republic, the Assembly of the Republic, the Government, and the Courts. The Assembly of the Republic is composed of deputies elected for electoral areas, called “circles,” that are geographically defined by law. They have the power to propose laws and question the Government regarding its actions. The Assembly of the Republic has political, legislative, and oversight powers. In addition to deputies, parliamentary groups, the Government, and groups of registered electors also have the power to initiate legislation and referenda.

## I. Introduction

Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people, and committed to building a free, just, and solidary society.<sup>1</sup> The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and organization, respect for and the guarantee of the effective implementation of fundamental rights and freedoms, and the separation and interdependence of powers, all with a view to achieving economic, social, and cultural democracy and deepening participatory democracy.<sup>2</sup>

The political power lies with the people and must be exercised in accordance with the Constitution.<sup>3</sup> The direct and active participation in politics by men and women is a fundamental instrument in the consolidation of the democratic system, and the law must promote both equality in the exercise of civic and political rights and the absence of gender-based discrimination in access to political office.<sup>4</sup>

The President of the Republic, the Assembly of the Republic, the Government, and the Courts constitute the bodies that exercise sovereign power.<sup>5</sup>

The formation, composition, responsibilities and power, and modus operandi of the bodies that exercise sovereign power are those laid down in the Constitution.<sup>6</sup> Bodies that exercise sovereign

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<sup>1</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA, VII Revisão Constitucional (2005), art. 1, <http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>, archived at <https://perma.cc/A85X-YULZ>.

<sup>2</sup> *Id.* art. 2.

<sup>3</sup> *Id.* art. 108.

<sup>4</sup> *Id.* art. 109.

<sup>5</sup> *Id.* art. 110(1).

<sup>6</sup> *Id.* art. 110(2).

power must be separate and interdependent, as provided by the Constitution.<sup>7</sup> No body that exercises sovereign power and belongs to an autonomous region or local authority should delegate its powers to other bodies, save in such cases and under such terms as are expressly authorized in the Constitution and the law.<sup>8</sup>

### **A. President of the Republic**

The President of the Republic represents the Portuguese Republic; guarantees the national independence, the unity of the state, and the proper functioning of the country's democratic institutions; and is also Commander-in-Chief of the Armed Forces.<sup>9</sup>

### **B. Assembly of the Republic**

Portugal has a unicameral legislature, the Assembly of the Republic, that represents all Portuguese citizens.<sup>10</sup> Its composition and political and legislative responsibilities are discussed below.

### **C. Government**

The Government is the body that conducts the country's general policy and the supreme authority in the Public Administration.<sup>11</sup> The Government is composed of the Prime Minister, Ministers, and Secretaries and Under Secretaries of State.<sup>12</sup> The Government may include one or more Deputy Prime Ministers.<sup>13</sup> The number, name, and responsibilities of the ministries and secretariats and the means of coordination between them are established in each case by the decree appointing their officers, or by executive law.<sup>14</sup>

The President of the Republic appoints the Prime Minister after consulting the parties with seats in the Assembly of the Republic and in the light of the electoral results.<sup>15</sup> The remaining members of the Government are appointed by the President of the Republic upon a proposal from the Prime Minister.<sup>16</sup>

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<sup>7</sup> *Id.* art. 111(1).

<sup>8</sup> *Id.* art. 111(2).

<sup>9</sup> *Id.* art. 120.

<sup>10</sup> *Id.* art. 147.

<sup>11</sup> *Id.* art. 182.

<sup>12</sup> *Id.* art. 183(1).

<sup>13</sup> *Id.* art. 183(2).

<sup>14</sup> *Id.* art. 183(3).

<sup>15</sup> *Id.* art. 187(1).

<sup>16</sup> *Id.* art. 187(2).

## D. Courts

The courts, which exercise sovereign power, have the responsibility to administer justice in the name of the people.<sup>17</sup> In administering justice, the courts must ensure the defense of those citizens' rights and interests that are protected by law, repress breaches of the democratic rule of law, and resolve public and private conflicts of interest.<sup>18</sup>

## II. The Assembly of the Republic

### A. Composition

The Assembly of the Republic must have a minimum of 180 and a maximum of 230 deputies (*Deputados*), as established by electoral law.<sup>19</sup>

Deputies have the following powers:

- a. To submit draft amendments to the Constitution;
- b. To submit bills of law (*projectos de lei*), draft amendments to the internal regulation (*Regulamento*), draft resolutions (*resolução*), particularly in relation to referenda, and draft decisions (*propostas de deliberação*), and to request that they be scheduled for debate;
- c. To take part and speak in parliamentary debates, as established by the internal regulation;
- d. To question the Government about any of its acts or those of the public administration, and to obtain answers within a reasonable period of time, save the provisions of the law concerning state secrets;
- e. To request and obtain from the Government or the governing bodies of any public entity, such information and documents and official publications deemed useful to the exercise of their mandate;
- f. To request the formation of parliamentary committees of inquiry;
- g. The powers established by the internal regulation.<sup>20</sup>

### B. Powers

#### 1. Political and Legislative Powers

Article 161 of the Constitution determines that the Assembly of the Republic is responsible for

- a. Passing amendments to the Constitution in accordance with article 284 (competence and time for revisions); article 285 (revision initiative); article 286 (approval and enactment);

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<sup>17</sup> *Id.* art. 202(1).

<sup>18</sup> *Id.* art. 202(2).

<sup>19</sup> *Id.* art. 148.

<sup>20</sup> *Id.* art. 156 (all translations by author).

article 287 (new text of the Constitution); article 288 (matters in which revision is restricted); and article 289 (circumstances in which revision is restricted) of the Constitution;

b. Passing the political and administrative statutes of the autonomous regions and the laws governing the election of the deputies of their Legislative Assemblies;

c. Making laws on all matters, save those that are the exclusive responsibility of the Government under the Constitution;

d. Granting the Government legislative authorizations;

e. Granting the Legislative Assemblies of the autonomous regions the authorizations provided for in article 227(1)(b), which authorizes the Legislative Assemblies to legislate on matters that fall within the Assembly of the Republic's partially exclusive responsibility to legislate;

f. Granting generic amnesties and pardons;

g. Upon proposals from the Government, passing the laws on the Major Options of the National Plans and the State Budget;

h. Authorizing the Government to contract and grant loans and engage in other lending operations, apart from floating debt operations, laying down the general terms and conditions governing such loans and lending operations, and setting the upper limit for guarantees to be given by the Government in any given year;

i. Passing treaties, particularly those that entail Portugal's participation in international organizations, friendship, peace, defense, the rectification of borders or military affairs, as well as international agreements that address matters which are the exclusive responsibility of the Assembly, or which the Government deems fit to submit to the Assembly for consideration;

j. Proposing to the President of the Republic that important issues of national interest be submitted to referendum;

l. Authorizing and confirming declarations of a state of siege or a state of emergency;

m. Authorizing the President of the Republic to declare war or to make peace;

n. Declaring, as established by law, on such matters awaiting decision by European Union bodies as concern the sphere of its exclusive legislative responsibility;

o. Performing such other functions as the Constitution and the law may allocate to it.<sup>21</sup>

## 2. *Oversight Powers*

In the performance of its oversight functions the Assembly of the Republic is responsible for

a. Overseeing compliance with the Constitution and the laws and considering the actions of the Government and the Public Administration;

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<sup>21</sup> *Id.* art. 161.

- b. Considering the manner in which a declaration of a state of siege or a state of emergency has been applied;
- c. Considering executive laws, save those made under the Government's exclusive legislative responsibility, and considering the regional legislative decrees provided for in Article 227(1)b, both for the purpose of determining whether they should be amended or cease to be in force;
- d. Receiving the accounts of the state and such other public bodies as determined by law. Such accounts must be submitted by 31 December of the following year, together with the opinion of the Audit Court and the other items needed to consider them;
- e. Considering reports on the execution of national plans.<sup>22</sup>

### 3. *Powers in Relation to Other Bodies*

In relation to other bodies, article 163 of the Constitution determines that the Assembly of the Republic is responsible for

- a. Witnessing the President of the Republic's inauguration;
- b. Consenting to the President of the Republic's absence from Portuguese territory;
- c. Promoting the bringing of proceedings against the President of the Republic for crimes committed in the performance of his or her functions, and deciding whether to suspend members of the Government in the case provided for in Article 196, which deals with lifting immunity from criminal prosecution from members of the Government;
- d. Considering the Government's Program;
- e. Voting on motions of confidence (*voto de confiança*) or no confidence (*censura*) in the Government;
- f. As established by law, supervising and considering Portugal's participation in the process of constructing the European Union;
- g. Under the proportional representation system, electing five members of the Council of State (Conselho de Estado) and those members of the Supreme Council of the Public Prosecutor's Office (Conselho Superior do Ministério Público) whom the Assembly is responsible for appointing;
- h. By a majority that is at least equal to two-thirds of all deputies present and greater than an absolute majority of all deputies in full exercise of their functions, electing ten judges to the Constitutional Tribunal, the Ombudsman (Provedor de Justiça), the President of the Economic and Social Council, seven members of the Supreme Judicial Council (Conselho Superior da Magistratura), the members of the media regulatory body and the members of all other constitutional bodies, appointments to which are the responsibility of the Assembly of the Republic by law;
- i. Supervising the involvement of military contingents and security forces abroad, as established by law.<sup>23</sup>

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<sup>22</sup> *Id.* art. 162.

<sup>23</sup> *Id.* art. 163.

#### *4. Exclusive Powers to Legislate*

Pursuant to article 164 of the Constitution, the Assembly of the Republic has exclusive powers to legislate on

- a. Elections to bodies that exercise sovereign power;
- b. Rules to be used in referenda;
- c. The organization, operation and proceedings of the Constitutional Tribunal;
- d. The organization of national defense, the definition of the duties derived therefrom and the basic general elements of the organization, operation, re-equipping and discipline of the Armed Forces;
- e. Rules governing states of siege and states of emergency;
- f. The acquisition, loss, and reacquisition of Portuguese citizenship;
- g. The definition of the limits of territorial waters, the exclusive economic zone, and Portugal's rights to the adjacent seabed;
- h. Political associations and parties;
- i. The basic elements of the education system;
- j. The election of the deputies of the Legislative Assemblies of the autonomous regions;
- l. The election of local government officers and other elections conducted by direct, universal suffrage, as well as elections to the remaining constitutional bodies;
- m. The statute and role of the officers of bodies that exercise sovereign power and local government officers, as well as of the officers of the remaining constitutional bodies and of all those who are elected by direct, universal suffrage;
- n. Without prejudice to the powers of the autonomous regions, the creation, abolition, and modification of local authorities and the rules governing them;
- o. Restrictions on the exercise of rights by full-time military and militarized personnel on active service and by members of the police forces and security services;
- p. The rules governing the appointment of members of European Union bodies, with the exception of the Commission;
- q. The rules governing the Republic's intelligence system and state secrets;
- r. The general rules governing the preparation and organization of the budgets of the state, the autonomous regions, and local authorities;
- s. The rules governing national symbols;
- t. The rules governing the finances of the autonomous regions;
- u. The rules governing the police forces and security services;

v. The rules governing the organizational, administrative, and financial autonomy of the President of the Republic's supporting services.<sup>24</sup>

### 5. *Partial Powers to Legislate*

According to article 165 of the Constitution, unless the Government has been given legislative authority, it is the exclusive competence of the Assembly of the Republic to legislate on the following matters:

- a. People's status and legal capacity;
- b. Rights, freedoms, and guarantees;
- c. The definition of crimes, punishments, security measures, and the preconditions therefore, and criminal procedure;
- d. The general rules for punishing disciplinary violations, and those governing administrative offenses and the applicable proceedings;
- e. The general rules governing requisitions and expropriations in the public interest;
- f. The basic elements of the social security system and the national health service;
- g. The basic elements of the rules for protecting nature, the ecological balance, and the cultural heritage;
- h. The general rules governing rural and urban rentals;
- i. The creation of taxes and the fiscal system, and the general rules governing duties and other financial payments to public bodies;
- j. The definition of sectors of ownership of the means of production, including that of basic sectors in which private businesses and other bodies of a similar nature shall be forbidden to act;
- l. The means and forms of intervention, expropriation, nationalization, and privatization of and in relation to means of production and soils in the public interest, together with criteria for setting compensation in such cases;
- m. The rules governing economic and social development plans and the composition of the Economic and Social Council (Conselho Económico e Social);
- n. The basic elements of the agricultural policy, including the setting of the maximum and minimum limits for farming units;
- o. The monetary system and the standard for weights and measures;
- p. The organization and responsibilities of the courts and the Public Prosecutors' Office (Ministério Público) and the statutes and role of the respective judges, as well as the organization and responsibilities of nonjudicial conflict settlement bodies;
- q. The status and role of local authorities, including the rules governing local finances;

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<sup>24</sup> *Id.* art. 164.

- r. Participation in local government by residents organizations;
- s. Public associations, guarantees available to users of the public administration, and the public administration's civil liability;
- t. The basic elements of the rules governing, and the scope of, the public administration;
- u. The basic general elements of the statutes of public companies and public foundations;
- v. The definition of, and the rules governing, property in the public domain;
- x. The rules governing means of production that are integrated into the cooperative and social sector of ownership;
- z. The basic elements of town, country, and urban planning;
- aa. The rules governing municipal police forces and the form in which they are created.<sup>25</sup>

Laws that grant authorization to the Government to legislate must define the object, purpose, extent, and duration of such authorization, which may be extended.<sup>26</sup> Authorizations lapse upon the resignation or removal of the Government to which they were granted, at the end of the legislature, or upon the dissolution of the Assembly of the Republic.<sup>27</sup> Authorizations granted to the Government by the budget law must comply with the provisions of article 165 of the Constitution and, when they address fiscal matters, only lapse at the end of the fiscal year to which they refer.<sup>28</sup>

## 6. *Internal Powers*

The Assembly of the Republic is also responsible for (a) drafting its internal regulation under the terms of the Constitution; (b) electing its President and the remaining members of the Board by absolute majority of all the deputies in full exercise of their functions, with the four Vice-Presidents being elected upon proposals from the four largest parliamentary groups; and (c) forming the standing committee and the remaining committees.<sup>29</sup>

## 7. *Sessions*

Each legislature lasts for four legislative sessions.<sup>30</sup> In the event of the dissolution of the Assembly, the newly elected Assembly must commence a new legislature, the duration of which must be extended at the beginning by such time as is needed to complete the period that corresponds to the legislative session that was in progress on the date of the election.<sup>31</sup>

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<sup>25</sup> *Id.* art. 165(1).

<sup>26</sup> *Id.* art. 165(2).

<sup>27</sup> *Id.* art. 165(4).

<sup>28</sup> *Id.* art. 165(5).

<sup>29</sup> *Id.* art. 175.

<sup>30</sup> *Id.* art. 171(1).

<sup>31</sup> *Id.* art. 171(2).

A legislative session lasts for one year, commencing on September 15.<sup>32</sup> Without prejudice to suspensions decided by a two-thirds majority of all deputies present, the Assembly of the Republic's normal parliamentary term is from September 15 to June 15.<sup>33</sup> Following a plenary decision to extend the normal parliamentary term, on the initiative of the standing committee, or, in the event that the said committee is unable to function and there is a dire emergency, on the initiative of more than half of all the deputies, the Assembly may conduct proceedings outside the specified one-year term.<sup>34</sup>

The President of the Republic may also call the Assembly into session on an extraordinary basis in order to address specific matters.<sup>35</sup> When the Assembly so decides, committees may conduct proceedings regardless of whether the Assembly is in plenary session.<sup>36</sup>

### C. Committees

Pursuant to article 178 of the Constitution, the Assembly of the Republic has the committees provided for in the Internal Regulation of the Assembly, and may form ad hoc committees of inquiry or for any other purpose.<sup>37</sup>

The Portuguese Parliament currently has twelve standing committees (*comissões parlamentares*),<sup>38</sup> which are specialized committees with permanent jurisdiction over specific matters and exist in principle in every legislature, and ad hoc committees that are established for a limited period of time in order to perform a specific function, culminating in the presentation of a descriptive report on the committee's work, which must include the committee's conclusions.<sup>39</sup>

Each committee may create subcommittees to look at specific matters that fall within the main committee's overall areas of competence, although this does require prior authorization by the President of the Assembly of the Republic, who will first consult the Conference of Parliamentary Committee Chairmen. Once authorization has been received from the President of the Assembly, the subcommittee's composition and scope are defined by the committee that created it, and at the end of its work, the subcommittee's conclusions are also submitted to the parent committee. In addition to subcommittees, committees may also create working groups for specific, temporary purposes. These may be of a legislative nature or created to follow up on certain matters.<sup>40</sup>

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<sup>32</sup> *Id.* art. 174(1).

<sup>33</sup> *Id.* art. 174(2).

<sup>34</sup> *Id.* art. 174(3).

<sup>35</sup> *Id.* art. 174(4).

<sup>36</sup> *Id.* art. 174(5).

<sup>37</sup> *Id.* art. 178(1). Article 178 of the Constitution further defines the composition and functioning of the committees.

<sup>38</sup> Article 179 of the Constitution regulates standing committees.

<sup>39</sup> *Comissões Parlamentares*, ASSEMBLEIA DA REPÚBLICA, <http://www.parlamento.pt/ComissoesAR/Paginas/default.aspx>, archived at <https://perma.cc/XJC4-LYQ6>.

<sup>40</sup> *Id.*

Committees of inquiry (*comissões de inquérito*) are ad hoc committees bound by specific rules. Their mission is to oversee compliance with the Constitution and other laws, and to consider the acts of the Government and the administration. In addition to complying with the special rules on their formation, duration, and *modus operandi*, committees of inquiry enjoy the same investigative powers as the judicial authorities.<sup>41</sup>

In addition to the committees identified above, the Assembly also has a Permanent Standing Committee that remains in session outside of those periods in which the Assembly is in full session, during periods in which it is dissolved, and in the remaining cases provided for in the Constitution.<sup>42</sup>

The Permanent Standing Committee is chaired by the President of the Assembly and composed of the vice-presidents and deputies indicated by the political parties, each in proportion to the number of seats each party holds in the Assembly.<sup>43</sup> According to article 179(3) of the Constitution, the Permanent Standing Committee is responsible for

- a. Overseeing compliance with the Constitution and the laws and monitoring the activities of the Government and the public administration;
- b. Exercising the Assembly's powers in relation to deputies' mandates;
- c. Taking steps to call the Assembly whenever necessary;
- d. Preparing the opening of legislative sessions;
- e. Consenting to the President of the Republic's absence from the country;
- f. Authorizing the President of the Republic to declare a state of siege or a state of emergency, to declare war or to make peace.<sup>44</sup>

In the case of declaration of a state of siege, state of emergency, war or declaration to make peace, the Permanent Standing Committee must take steps to call the Assembly as soon as possible.<sup>45</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA art. 179(1).

<sup>43</sup> *Id.* art. 179(2).

<sup>44</sup> *Id.* art. 179(3).

<sup>45</sup> *Id.* art. 179(4).

## D. Internal Regulation

The Constitution, the Internal Regulation of the Assembly,<sup>46</sup> and the Statute of the Deputies<sup>47</sup> establish the Assembly of the Republic's competences and the rules governing the way it works, together with the rights and duties of its deputies. In doing so they ensure that there is both a separation of powers and various forms of interdependence in relation to the other entities that exercise sovereignty.<sup>48</sup>

## III. Elections

### A. General Principle

Pursuant to article 113(1) of the Constitution, as a general rule, officers of the bodies that exercise sovereign powers, of regional authorities, and of local authorities are appointed by direct, secret, and periodic suffrage.<sup>49</sup> Pursuant to the Constitution, electoral registration is semi-official (*oficioso*), compulsory, and permanent, and there must be a single registration system for all elections that are held by direct, universal suffrage, without prejudice to the provisions of articles 15(4), which deals with foreigners' right to vote based on reciprocity; article 15(5), which deals with citizens of the European Union residing in Portugal and their right to vote and be voted on for membership in the European Parliament; and article 121(2), which regulates the right to vote of Portuguese citizens living abroad.<sup>50</sup>

Election campaigns are governed by the following principles:

- a. Freedom to advertise;
- b. Equal opportunities and treatment for all candidacies;
- c. The impartiality of public bodies towards all candidacies;
- d. The transparency and oversight of electoral accounts.<sup>51</sup>

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<sup>46</sup> Regimento da Assembleia da República No. 1/2007, de 20 de Agosto (2017), [http://www.parlamento.pt/Legislacao/Documents/Legislacao\\_Anotada/RegimentoAR\\_Simples.pdf](http://www.parlamento.pt/Legislacao/Documents/Legislacao_Anotada/RegimentoAR_Simples.pdf), archived at <https://perma.cc/MX3D-VDAC>.

<sup>47</sup> Estatuto dos Deputados, Lei No. 7/93, de 1 de Março (2009), [http://www.parlamento.pt/Legislacao/Documents/Legislacao\\_Anotada/EstatutoDeputados\\_Simples.pdf](http://www.parlamento.pt/Legislacao/Documents/Legislacao_Anotada/EstatutoDeputados_Simples.pdf), archived at <https://perma.cc/9LTF-UE5K>.

<sup>48</sup> *Parlamento*, ASSEMBLEIA DA REPÚBLICA, <http://www.parlamento.pt/Parlamento/Paginas/default.aspx>, archived at <https://perma.cc/GG3K-92JL>.

<sup>49</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA art. 113(1).

<sup>50</sup> *Id.* art. 113(2).

<sup>51</sup> *Id.* art. 113(3).

Citizens have the duty to cooperate with the electoral authorities as determined by law.<sup>52</sup> Votes cast must be converted into seats in accordance with the principle of proportional representation.<sup>53</sup> Any act that dissolves a collegiate body that is based on direct suffrage must also set the date of a new election thereto. Such elections must be held within the following sixty days and in accordance with the electoral law that is in force at the time of the dissolution, under penalty of inexistence of the act dissolving the collegiate body.<sup>54</sup> The electoral courts have jurisdiction to rule on the correctness and validity of electoral acts.<sup>55</sup> The Electoral Law for the Assembly of the Republic regulates the elections for deputies of the Assembly of the Republic,<sup>56</sup> and the Electoral Law of the President of the Republic regulates the election of the President.<sup>57</sup>

## B. President of the Republic

The President of the Republic is elected by the universal, direct, secret suffrage of all Portuguese citizens who are registered to vote in Portuguese territory and also who reside abroad.<sup>58</sup> The law regulates the right to vote of Portuguese citizens who reside abroad, which must consider the existence of ties that effectively link them to the Portuguese community.<sup>59</sup> The right to vote in Portuguese territory must be exercised in person.

Registered Portuguese citizens by origin who are thirty-five years old are eligible to run for President of the Republic.<sup>60</sup> Re-election to a third consecutive term of office, or during the five years immediately following the end of a second consecutive term of office, is not permitted.<sup>61</sup> In the event of a resignation, the person cannot run for President in the next election or in any election that takes place in the five years immediately following the resignation.<sup>62</sup>

Nominations (*candidaturas*) for President of the Republic must be put forward by at least 7,500 and at most 1,500 registered voters.<sup>63</sup> Nominations must be submitted to the Constitutional Court at least thirty days prior to the date set for the election.<sup>64</sup> In the event of the death of any candidate, or of

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<sup>52</sup> *Id.* art. 113(4).

<sup>53</sup> *Id.* art. 113(5).

<sup>54</sup> *Id.* art. 113(6).

<sup>55</sup> *Id.* art. 113(7).

<sup>56</sup> Lei Eleitoral para a Assembleia da República, Lei No. 14/79, de 16 de Maio (2015), [http://www.parlamento.pt/legislacao/documents/legislacao\\_annotada/leieitoralalar\\_annotada.pdf](http://www.parlamento.pt/legislacao/documents/legislacao_annotada/leieitoralalar_annotada.pdf), archived at <https://perma.cc/5YR8-DXJP>.

<sup>57</sup> Lei Eleitoral do Presidente da República, Decreto-Lei No. 319-A/76, de 3 de Maio (2015), [http://www.cne.pt/sites/default/files/dl/legis\\_lepr\\_2015vf.pdf](http://www.cne.pt/sites/default/files/dl/legis_lepr_2015vf.pdf), archived at <https://perma.cc/RYB4-T4NY>.

<sup>58</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA art. 121(1).

<sup>59</sup> *Id.* art. 121(2).

<sup>60</sup> *Id.* art. 122.

<sup>61</sup> *Id.* art. 123(1).

<sup>62</sup> *Id.* art. 123(2).

<sup>63</sup> *Id.* art. 124(1).

<sup>64</sup> *Id.* art. 124(2).

any other fact that renders any candidate incapable of performing the functions of President of the Republic, the election process must recommence under the terms defined by law.<sup>65</sup>

The President of the Republic must be elected during the sixty days prior to the end of his or her predecessor's term of office, or during the sixty days after that office becomes vacant.<sup>66</sup> Elections must not take place during the ninety days prior to or following the date of elections to the Assembly of the Republic.<sup>67</sup> In this case, the election must take place during the ten days following the end of the period set out therein, and the term of office of the outgoing President must automatically be extended for the necessary period of time.<sup>68</sup>

The candidate who receives more than half of the validly cast votes must be elected President of the Republic. Blank ballot papers are not deemed validly cast.<sup>69</sup> If none of the candidates obtains this number of votes, a second ballot must be held within twenty-one days of the date of the first one.<sup>70</sup> Only the two candidates who received the most votes in the first ballot and have not withdrawn their candidacies stand in the second ballot.<sup>71</sup>

The President-elect takes office before the Assembly of the Republic.<sup>72</sup> The installation takes place on the last day of the outgoing President's term of office, or, in the case of election to a vacant office, on the eighth day following that on which the election results are published.<sup>73</sup> Upon taking office, the elected President-elect must take the following oath:

I swear by my honor to faithfully perform the office with which I am invested and to defend, fulfill, and enforce the Constitution of the Portuguese Republic.<sup>74</sup>

The term of office of President of the Republic is five years and ends upon installation of the newly elected President.<sup>75</sup> In the event of a vacancy, the newly elected President of the Republic commences a new term of office.<sup>76</sup>

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<sup>65</sup> *Id.* art. 124(3).

<sup>66</sup> *Id.* art. 125(1).

<sup>67</sup> *Id.* art. 125(2).

<sup>68</sup> *Id.* art. 125(3).

<sup>69</sup> *Id.* art. 126(1).

<sup>70</sup> *Id.* art. 126(2).

<sup>71</sup> *Id.* art. 126(3).

<sup>72</sup> *Id.* art. 127(1).

<sup>73</sup> *Id.* art. 127(2).

<sup>74</sup> *Id.* art. 127(3).

<sup>75</sup> *Id.* art. 128(1).

<sup>76</sup> *Id.* art. 128(2).

### C. Assembly of the Republic

Deputies for the Assembly of the Republic are elected for electoral areas, known as “circles,” that are geographically defined by law. The law may create multi-member and single-member circles and establish their nature and function, all in such a way as to ensure that votes are converted into seats in accordance with the proportional representation system and using ‘d’Hondt’s<sup>77</sup> highest-average rule.<sup>78</sup> With the exception of the national circle, if one has been formed, the number of deputies for each plurinominal circle in Portuguese territory must be proportional to the number of citizens registered to vote therein.<sup>79</sup>

Portuguese citizens who are registered to vote are also eligible to be voted on, subject to the restrictions imposed by electoral law.<sup>80</sup>

Nominations are submitted by political parties as established by law. Parties may submit such nominations individually or in coalition, and their lists of candidates may include citizens who are not registered members of any of the parties in question.<sup>81</sup> A person cannot be a candidate for more than one electoral circle, with the exception of the national constituency, if one has been formed. No person may appear on more than one list of candidates.<sup>82</sup>

The law cannot limit the conversion of votes into seats by requiring a minimum national percentage of votes cast.<sup>83</sup> Deputies must represent the whole country and not the electoral circles for which they are elected.<sup>84</sup>

Deputies’ terms of office commence upon the first session of the Assembly of the Republic following elections to the Assembly and end upon the first session following the subsequent elections to the Assembly, without prejudice to the suspension or termination of any individual mandate.<sup>85</sup> Electoral law regulates the filling of vacancies that arise in the Assembly and, in cases in which there are important grounds for doing so, the temporary substitution of deputies.<sup>86</sup>

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<sup>77</sup> “The allocation of seats in collegiate organs such as parliaments requires a method to translate votes proportionally into whole seats. The ‘d’Hondt method’ is a mathematical formula used widely in proportional representation systems . . . .” *Understanding the d’Hondt Method: Allocation of Parliamentary Seats and Leadership Positions*, EUROPEAN PARLIAMENT THINK TANK, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2016\)580901](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)580901) (last visited Jan. 24, 2018), archived at <https://perma.cc/AWK5-VVZZ>.

<sup>78</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA art. 149(1).

<sup>79</sup> *Id.* art. 149(2).

<sup>80</sup> *Id.* art. 150.

<sup>81</sup> *Id.* art. 151(1).

<sup>82</sup> *Id.* art. 151(2).

<sup>83</sup> *Id.* art. 152(1).

<sup>84</sup> *Id.* art. 152(2).

<sup>85</sup> *Id.* art. 153(1).

<sup>86</sup> *Id.* art. 153(2).

Article 19(1) of the Electoral Law for the Assembly of the Republic determines that the President of the Republic must schedule the date of the election of the deputies to the Assembly of the Republic at least sixty days in advance, or, in case of dissolution, at least fifty-five days in advance.<sup>87</sup> In the case of elections for a new legislature, the elections are held between September 14 and October 14 of the year corresponding to the term of the legislature.<sup>88</sup>

## IV. The Legislative Process

### A. Form of Acts

The acts provided for in article 161(a) (discussed above) take the form of constitutional laws.<sup>89</sup> The acts provided for in articles 164 (a)–(f), (h), (j), the first part of (l), (q) and (t), and article 255 take the form of organizational laws (*leis orgânicas*).<sup>90</sup> The acts provided for in article 161(b)–(h) take the form of laws.<sup>91</sup> The acts provided for in article 163(d)(e) take the form of motions.<sup>92</sup> The remaining acts of the Assembly of the Republic take the form of resolutions, as well as those of the Permanent Standing Committee provided for in article 179(3)(e)(f).<sup>93</sup> Resolutions must be published regardless of their enactment.<sup>94</sup>

### B. Initiative to Legislation and Referenda

The power to initiate legislation and referenda lies with deputies, parliamentary groups, and the Government, and also, subject to the terms and conditions established by law, with groups of registered electors. The power to initiate legislation in relation to the autonomous regions lies with the respective Legislative Assembly.<sup>95</sup>

No deputy, parliamentary group, Legislative Assembly of an autonomous region, or group of registered electors may submit bills or draft amendments that involve, during the current financial year, an increase in the state's expenditure or a decrease in its revenues as set out in the budget.<sup>96</sup> The same limitation applies to draft referenda submitted by a deputy, parliamentary group, or group of registered electors.<sup>97</sup>

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<sup>87</sup> Lei Eleitoral para a Assembleia da República art. 19(1).

<sup>88</sup> *Id.* art. 19(2).

<sup>89</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA art. 166(1).

<sup>90</sup> *Id.* art. 166(2).

<sup>91</sup> *Id.* art. 166(3).

<sup>92</sup> *Id.* art. 166(4).

<sup>93</sup> *Id.* art. 166(5).

<sup>94</sup> *Id.* art. 166(6).

<sup>95</sup> *Id.* art. 167(1).

<sup>96</sup> *Id.* art. 167(2).

<sup>97</sup> *Id.* art. 167(3).

Bills and draft referenda that are definitively rejected may not be resubmitted in the same legislative session unless a new Assembly of the Republic is elected.<sup>98</sup>

Bills and draft referenda that are not put to the vote in the legislative session in which they are submitted are not required to be resubmitted in the following legislative sessions, unless the legislature itself comes to an end.<sup>99</sup> Bills and draft referenda lapse upon the resignation or removal of the Government.<sup>100</sup>

Bills that are initiated by Legislative Assemblies of the autonomous regions lapse at the end of the respective legislature, save in the event that their general principles have already been passed, in which case they only lapse upon the end of the legislature of the Assembly of the Republic.<sup>101</sup> Parliamentary committees may submit replacement texts, without prejudice to the bills and draft referenda to which they refer, unless they are withdrawn.<sup>102</sup>

### C. Debates and Voting

Debates on pending bills are comprised of a debate on the general principles and another on the details.<sup>103</sup> Voting occurs on the general principles and on the details, followed by a final overall vote.<sup>104</sup>

In the event that the Assembly so decides, texts that are passed on the general principles must be put to vote on the details by the committees, without prejudice to the Assembly's power to mandate the plenary to put the details to a vote, or to put the final overall vote to the plenary.<sup>105</sup>

The details of laws on the matters provided for in articles 164(a)–(f), (h), (n), (o), and 165(1)(q) of the Constitution must be put to a vote by the plenary.<sup>106</sup>

When put to the overall final vote, organizational laws require passage by an absolute majority of all the deputies in full exercise of their functions. The same majority is required for passage of the provisions concerning the regions' territorial borders, as provided for in article 255 of the Constitution, which defines the creation of administrative regions.<sup>107</sup>

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<sup>98</sup> *Id.* art. 167(4).

<sup>99</sup> *Id.* art. 167(5).

<sup>100</sup> *Id.* art. 167(6).

<sup>101</sup> *Id.* art. 167(7).

<sup>102</sup> *Id.* art. 167(8).

<sup>103</sup> *Id.* art. 168(1).

<sup>104</sup> *Id.* art. 168(2).

<sup>105</sup> *Id.* art. 168(3).

<sup>106</sup> *Id.* art. 168(4).

<sup>107</sup> *Id.* art. 168(5).

Passage of the following matters require a majority that is at least equal to two-thirds of all deputies present and greater than an absolute majority of all the deputies in full exercise of their functions:

- a. The law governing the media regulatory body;
- b. The rules governing the provisions of article 118(2);
- c. The law that regulates the exercise of the right provided for in article 121(2);
- d. The provisions of the laws that regulate the matters referred to in articles 148 and 149, and those concerning the system and method for electing the bodies provided for in article 239(3);
- e. The provisions that regulate the subject matter of article 164(o);
- f. Those provisions of the political and administrative statutes of the autonomous regions that set out the matters that are covered by the autonomous regions' power to legislate.<sup>108</sup>

#### **D. Parliamentary Consideration of Legislation**

Unless passed under the Government's exclusive power to legislate upon a motion made by ten deputies within thirty days of their publication, excluding periods in which the Assembly of the Republic's proceedings are suspended, decree-laws may be subject to consideration and possible amendment or abrogation by the Assembly.<sup>109</sup>

Once a motion to consider a decree-law issued under the terms of an authorization to legislate has been made, and if one or more amendments are proposed, the Assembly may suspend the force of all or part of the decree-law until either the law that amends it is published, or all the proposed amendments are rejected.<sup>110</sup> Such suspensions expire after ten plenary sittings, if the Assembly has not made a decision by then.<sup>111</sup>

If the termination of the validity of the decree-law is approved, it must cease to exist from the day the resolution is published in the official gazette (*Diário da República*) and may not be republished during the same legislative session.<sup>112</sup>

In the event that a motion to consider has been made and the Assembly has not pronounced on the result of such consideration, or in the event that the Assembly has decided to make amendments, but has not put the respective law to the vote by the end of the then current legislative session, and on condition that at least fifteen plenary sessions have passed, the consideration process is deemed

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<sup>108</sup> *Id.* art. 168(6).

<sup>109</sup> *Id.* art. 169(1).

<sup>110</sup> *Id.* art. 169(2).

<sup>111</sup> *Id.* art. 169(3).

<sup>112</sup> *Id.* art. 169(4).

to have lapsed.<sup>113</sup> Proceedings concerning the consideration of decree-laws enjoy priority under the terms of the internal regulation.<sup>114</sup>

### **E. Emergency Proceedings**

Upon the initiative of any deputy, parliamentary group, or the Government, the Assembly of the Republic may declare any bill or draft resolution to be the object of emergency proceedings.<sup>115</sup> Upon the initiative of the Legislative Assembly of the autonomous region in question, the Assembly may also declare any regional government bill to be the object of emergency proceedings.<sup>116</sup>

### **F. Referenda**

Upon a decision made by the President of the Republic following a proposal from the Assembly of the Republic or the Government, citizens registered to vote in the national territory may be called upon to render a binding decision by means of a referendum on matters specified in the Constitution and law.<sup>117</sup>

Referenda may also be held on the initiative of citizens who submit a request to the Assembly of the Republic. Such requests must be submitted and considered under the terms and within the time limits established by law.<sup>118</sup>

The object of a referendum is limited to important issues concerning the national interest upon which the Assembly of the Republic or the Government must decide by passing an international agreement or legislative act.<sup>119</sup>

Article 115(4) of the Constitution determines that the following matters may not be subject to a referendum:

- a. Alterations to the Constitution;
- b. Issues and acts with budgetary, tax-related, or financial content;
- c. The matters provided for in article 161, without prejudice to the provision of article 115(5) below;
- d. The matters provided for in article 164, save the provisions of article 164(i).<sup>120</sup>

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<sup>113</sup> *Id.* art. 169(5).

<sup>114</sup> *Id.* art. 169(6).

<sup>115</sup> *Id.* art. 170(1).

<sup>116</sup> *Id.* art. 170(2).

<sup>117</sup> *Id.* art. 115(1).

<sup>118</sup> *Id.* art. 115(2).

<sup>119</sup> *Id.* art. 115(3).

<sup>120</sup> *Id.* art. 115(4).

Article 115(5) of the Constitution establishes that the provision of article 115(4) above does not prevent the submission to a referendum of such important issues concerning the national interest that are the object of an international agreement pursuant to article 161(i) of the Constitution, except when they concern peace or the rectification of borders.<sup>121</sup>

Each referendum must only address one matter. Questions must be objectively, clearly, and precisely formulated; require yes or no answers; and not exceed the maximum number established by law. The law must also establish the other terms governing the formulation and holding of referenda.<sup>122</sup>

Referenda may not be called or held between the dates on which elections for the bodies that exercise sovereign power, self-governing bodies of the autonomous regions, local authorities, and deputies of the European Parliament are called and held.<sup>123</sup>

The President of the Republic must submit all draft referenda submitted to him or her by the Assembly of the Republic or the Government to compulsory prior determination of their constitutionality and legality.<sup>124</sup> The provisions of article 113(1)–(4), and (7) of the Constitution, which deal with general principles of electoral law, apply to referenda with the appropriate adaptations.<sup>125</sup>

Draft referenda that are refused by the President of the Republic or that are rejected by the electorate may not be resubmitted during the same legislative session, except upon new elections to the Assembly of the Republic or when the Government resigns or is removed.<sup>126</sup>

A referendum is only binding in the event that the number of citizens who voted exceeds half the number of registered voters.<sup>127</sup>

Citizens who reside abroad and are properly registered to vote under the provisions of article 121(2) of the Constitution must be called upon to take part in referenda that address matters that specifically concern them.<sup>128</sup> Referenda may be regional in scope, in accordance with article 232(2) of the Constitution.<sup>129</sup>

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<sup>121</sup> *Id.* art. 115(5).

<sup>122</sup> *Id.* art. 115(6).

<sup>123</sup> *Id.* art. 115(7).

<sup>124</sup> *Id.* art. 115(8).

<sup>125</sup> *Id.* art. 115(9).

<sup>126</sup> *Id.* art. 115(10).

<sup>127</sup> *Id.* art. 115(11).

<sup>128</sup> *Id.* art. 115(12).

<sup>129</sup> *Id.* art. 115(13).

## G. Enactment and Veto

Within twenty days from the receipt of any decree of the Assembly of the Republic for enactment as a law, or of the publication of the decision in which the Constitutional Court refrains from pronouncing the unconstitutionality of any norm contained therein, the President of the Republic must either enact the decree or exercise the right of veto and send a message setting out the grounds for doing so and requesting that the legislative act be reconsidered.<sup>130</sup>

If the Assembly of the Republic confirms its vote by an absolute majority of all the deputies in full exercise of their functions, the President of the Republic must enact the legislative act within a time limit of eight days counting from its receipt.<sup>131</sup> However, a majority that is at least equal to two-thirds of all deputies present and greater than an absolute majority of all deputies in the full exercise of their functions is required to confirm decrees that take the form of organic laws, as well as to confirm those concerning the following matters:

- a) External relations;
- b) Boundaries between the public, private and cooperative sectors of ownership of the means of production;
- c) Any regulation of the electoral acts provided for in the Constitution that does not take the form of an organic law.<sup>132</sup>

Within forty days of the receipt of any Government decree for enactment, or of the publication of the decision in which the Constitutional Court refrains from pronouncing the unconstitutionality of any norm contained therein, the President of the Republic must either enact the decree or exercise his right of veto and inform the Government in writing of the reasons for doing so.<sup>133</sup>

The President of the Republic must also exercise the right of veto pursuant to article 278, which deals with prior review of constitutionality, and article 279, which deals with the effects of Constitutional Court's decisions, of the Constitution.<sup>134</sup>

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<sup>130</sup> *Id.* art. 136(1).

<sup>131</sup> *Id.* art. 136(2).

<sup>132</sup> *Id.* art. 136(3).

<sup>133</sup> *Id.* art. 136(4).

<sup>134</sup> *Id.* art. 136(5).

# Spain

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**SUMMARY** Spain is a democratic monarchy organized under three branches of government: executive, legislative and judicial. The legislative branch, called the Cortes Generales (Parliament), is bicameral, with a Congress of Deputies and a Senate. Bills follow a process set up by the Spanish Constitution; most commonly, bills are initiated by the Congress of Deputies, reviewed by the Senate, and promulgated by the King. Bills may also be proposed by the government, the Senate, autonomous communities' parliaments, or through popular initiative.

## I. Introduction

The 1978 Spanish Constitution (SC)<sup>1</sup> sets up the institutional and political organization of the country. It was adopted as a result of a consensus reached after decades of the dictatorship of Francisco Franco.<sup>2</sup> It was approved in plenary sessions of the Congress of Deputies and the Senate on October 31, 1978, and ratified by the Spanish people via referendum by a broad majority of voters and electors on December 6, 1978.<sup>3</sup>

Under the SC, sovereignty is vested in the Spanish people, from whom state powers are derived.<sup>4</sup>

Spain is a member of the European Union (EU) and as such it has assigned certain economic and political competences to EU institutions.<sup>5</sup>

Under the SC, Spain is a constitutional parliamentary monarchy. The King is the head of state, representing the State at the national and international level. The Prime Minister is the head of the executive power and President of the Government.<sup>6</sup> Spain has a unitary form of government, in that all powers ultimately vested in the central government,<sup>7</sup> although some powers are delegated by it to lower levels of government. There are three different levels of government:

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<sup>1</sup> CONSTITUCIÓN ESPAÑOLA DE 1978 [SC] [SPANISH CONSTITUTION], <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>, archived at <https://perma.cc/8FQY-JKTL>.

<sup>2</sup> VICTOR FERRERES COMELLA, THE CONSTITUTION OF SPAIN: A CONTEXTUAL ANALYSIS 18 (2013).

<sup>3</sup> *Id.*

<sup>4</sup> SC art. 1.2.

<sup>5</sup> *Felipe González and Fernando Morán Sign Spain's Treaty of Accession to the European Communities (Madrid, 12 June 1985)*, CVCE.EU, [https://www.cvce.eu/en/obj/felipe\\_gonzalez\\_and\\_fernando\\_moran\\_sign\\_spain\\_s\\_treaty\\_of\\_accession\\_to\\_the\\_european\\_communities\\_madrid\\_12\\_june\\_1985-en-b80ade76-2844-4ef0-a4e8-7689e7f36c29.html](https://www.cvce.eu/en/obj/felipe_gonzalez_and_fernando_moran_sign_spain_s_treaty_of_accession_to_the_european_communities_madrid_12_june_1985-en-b80ade76-2844-4ef0-a4e8-7689e7f36c29.html) (last visited Feb. 11, 2018).

<sup>6</sup> SC art. 137.

<sup>7</sup> *Id.* art. 2.

- Central government
- Autonomous communities' governments
- Provincial and municipal governments

The central government is organized in three branches: The executive power; a bicameral Parliament known as the Cortes Generales,<sup>8</sup> which consists of the Congreso de los Diputados (Congress of Deputies)<sup>9</sup> and the Senado (Senate);<sup>10</sup> and the judiciary.<sup>11</sup>

The territorial organization of Spain includes seventeen autonomous communities (Andalucía; Aragón; Asturias (Principado de); Balears (Illes); Canarias; Cantabria; Castilla-La Mancha; Castilla y León; Cataluña; Comunitat Valenciana; Extremadura; Galicia; Madrid (Comunidad de); Murcia (Región de); Navarra (Comunidad Foral de); País Vasco; and Rioja (La). In addition there are 2 autonomous cities: Ceuta and Melilla.<sup>12</sup> In addition there are fifty provinces, which constitute electoral districts, spread out through the autonomous communities.<sup>13</sup>

Under the SC the State holds exclusive competence over the following matters:

- i) Regulation of the basic conditions guaranteeing the equality of all Spanish nationals in the exercise of their rights and in the fulfilment of their constitutional duties;
- ii) Nationality, immigration, emigration, status of foreigners, and the right of asylum;
- iii) International relations;
- iv) Defense and the Armed Forces;
- v) Administration of Justice;
- vi) Commercial, criminal and penitentiary legislation; procedural legislation, taking into consideration the special features derived from the particularities of the substantive law adopted by the Autonomous Communities;
- vii) Labor legislation;
- viii) Civil legislation, taking into consideration the preservation, modification and development by the Autonomous Communities of their civil laws, «fueros» or special laws, whenever these exist;

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<sup>8</sup> *Id.* art. 66.

<sup>9</sup> *Id.* art. 68.

<sup>10</sup> *Id.* art. 69.

<sup>11</sup> *Id.* arts. 117–127.

<sup>12</sup> *Id.* arts. 1.3, 2, 137–158.

<sup>13</sup> *Id.* art. 141; *Listado Standard de Provincias*, INSTITUTO NACIONAL DE ESTADÍSTICA, [http://www.ine.es/daco/daco42/codmun/cod\\_provincia\\_estandar.htm](http://www.ine.es/daco/daco42/codmun/cod_provincia_estandar.htm) (last visited Feb. 11, 2018), archived at <https://perma.cc/TWC9-5MJU>.

- ix) Legislation on intellectual and industrial property;
- x) Customs and tariff regulations and foreign trade;
- xi) Monetary system: foreign currency, exchange and convertibility; bases for the regulations concerning credit, banking and insurance;
- xii) Legislation on weights and measures, determination of the official time;
- xiii) Bases and coordination of general planning of economic activity;
- xiv) General finances and the State Debt;
- xv) Promotion and general coordination of scientific and technical research;
- xvi) External health measures; bases and general coordination of health matters; legislation on pharmaceutical products;
- xvii) Basic legislation and financial system of the Social Security, taking into consideration the implementation of its services by the Autonomous Communities;
- xviii) Bases of the legal regime of the Public Administration and civil servants and public officials, taking into consideration to the special features of the Autonomous Community's own organizations; legislation on compulsory expropriation; basic legislation on contracts and administrative concessions and the system of liability of all Public Administrations;
- xix) Sea fishing;
- xx) Merchant navy and the registering of ships; lighting of coasts and signals at sea; general purpose ports; general-purpose airports; control of air space, air traffic and transport; meteorological services and registration of aircraft;
- xxi) Railways and land transport passing through the territory of more than one Autonomous Community; general communications system; motor vehicle traffic; Post Office services and telecommunications; air and underwater cables and radio communications;
- xxii) Legislation, regulation and concession of water resources;
- xxiii) Basic legislation on environmental protection, considering the powers of the Autonomous Communities to establish additional protective measures; basic legislation on woodlands, forestry, and livestock trails;
- xxiv) Public works of general benefit or whose execution affects more than one Autonomous Community;
- xxv) Bases of the organization of mining and energy;
- xxvi) Legal regime of production, sale, possession and use of arms and explosives;
- xxvii) Basic rules on the press, radio and television and, in general, all the means of social communication, taking into consideration the powers vested in the Autonomous Communities related to their development and implementation;

xxviii) Protection of Spain's cultural and artistic heritage and national monuments against exportation and despoliation; museums, libraries and archives belonging to the State, taking into consideration its Autonomous Communities' management;

xxix) Public safety, taking into consideration the power of the Autonomous Communities to create its own police forces;

xxx) Regulation of academic degrees and professional qualifications;

xxxi) Statistics for State purposes;

xxxii) Authorization of popular consultations through referendums.<sup>14</sup>

All matters that are not expressly assigned to the State under the SC may fall under the jurisdiction of the autonomous communities. In case of conflict, the State's laws shall prevail over those of the autonomous communities regarding all matters over which exclusive jurisdiction has not been conferred upon the latter.<sup>15</sup>

The autonomous communities may assume competences over the following matters:

- i) Organization of their self-government institutions;
- ii) Changes in the municipal boundaries within their territory;
- iii) Town and country planning and housing;
- iv) Public works within its own territory;
- v) Railways, roads and transportation whose routes lie exclusively within the territory of the Autonomous Community;
- vi) Ports of haven, recreational ports and airports and, in general, those which are not engaged in commercial activities;
- vii) Agriculture and livestock;
- viii) Woodlands and forestry;
- ix) Environmental protection management;
- x) Planning, construction and operation of hydraulic projects, canals and irrigation of benefit to the Autonomous Community; mineral and thermal waters;
- xi) Inland water fishing, the shellfish industry and aquaculture, shooting and river fishing;
- xii) Local fairs;
- xiii) Economic development promotion of the Autonomous Community;
- xiv) Handicrafts;

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<sup>14</sup> SC art. 149.

<sup>15</sup> *Id.* art. 149.3.

- xv) Museums, libraries and music conservatories of interest to the Autonomous Community;
- xvi) Monuments of the Autonomous Communities;
- xvii) Promotion of culture, research and, when applicable, the teaching of the language of the Autonomous Community;
- xviii) Promotion and planning of tourism within its territory;
- xix) Promotion of sports and use of leisure;
- xx) Social assistance;
- xxi) Health and hygiene;
- xxii) Supervision and protection of its buildings and facilities; coordination and other powers relating to local police forces under the terms to be laid down by an organic law.<sup>16</sup>

## II. Parliament

Legislative power is entrusted to the Cortes Generales,<sup>17</sup> which is the official name of the Spanish Parliament. *Cortes* is a traditional name for a legislative body, which derives from medieval assemblies of various peninsular kingdoms; *Generales* denotes the nationwide representation of the Parliament.<sup>18</sup>

Members of Parliament are elected in universal, free, equal, direct and secret elections by the Spanish people in full exercise of their political rights.<sup>19</sup> They are elected for a four-year period.<sup>20</sup>

All members of Parliament have immunity for the opinions they express in the course of their functions.<sup>21</sup> No liability of any kind may be derived from those opinions.<sup>22</sup>

The Congress of Deputies is the chamber of popular representation, while the Senate serves as the chamber of territorial representation.<sup>23</sup>

Common functions of both the Congress of Deputies and the Senate include

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<sup>16</sup> *Id.* art. 148.

<sup>17</sup> *Id.* art. 66.

<sup>18</sup> *Las Cortes Generales*, SENADO DE ESPAÑA (Feb. 25, 2016), <http://www.senado.es/web/conocersenado/temasclave/cortesgenerales/index.html>, archived at <https://perma.cc/MS7F-QDE2>.

<sup>19</sup> SC art. 68.1.

<sup>20</sup> *Id.* arts. 68.4, 69.

<sup>21</sup> *Id.* arts. 66.3, 71.1.

<sup>22</sup> *Id.*

<sup>23</sup> *Senado en el Sistema Bicameral Espanol*, SENADO DE ESPAÑA (Feb. 26, 2016), <http://www.senado.es/web/conocersenado/temasclave/sistemabicameral/index.html>, archived at <https://perma.cc/QH9T-9RAX>.

- passing legislation;<sup>24</sup>
- approving the State budget, by passing the annual act setting forth revenues and expenditures;<sup>25</sup> and
- supervising the actions of the government through different procedures such as interrogations, interpellations, motions, and hearings.<sup>26</sup>

Members in both chambers are prohibited from belonging to both chambers simultaneously.<sup>27</sup>

The Constitution provides that members of both chambers enjoy the prohibition of imperative mandate (*mandato imperativo*), which means they are free to express themselves and vote their conscience without being subject to any instructions from electors or political parties.<sup>28</sup>

Parliamentary sessions normally run from February to June and from September to December.<sup>29</sup>

Each chamber is governed by its own internal rules and regulations.<sup>30</sup> Each chamber has the following offices:

- President
- Board (Mesa), which is the formal representative of each chamber as a body, in charge of its organization and internal work
- Bureau of Spokesmen (Junta de Portavoces), which includes one representative of each parliamentary group and meets to set the order of business and agenda of the body<sup>31</sup>

Both chambers convene in plenary sessions and in committees.<sup>32</sup> The chambers may delegate the approval of regular bills to standing legislative committees, although the plenary body may require debate and voting on any such delegated bill.<sup>33</sup> The approval of bills involving constitutional reform, international affairs, organic and basic acts, and the budget cannot be delegated.<sup>34</sup>

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<sup>24</sup> SC art. 66.2.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* art. 67.1.

<sup>28</sup> *Id.* art. 67.2; FERRERES COMELLA, *supra* note 2, at 101.

<sup>29</sup> SC art. 73.

<sup>30</sup> *Id.* art. 72.1.

<sup>31</sup> *Id.* art. 72.2.

<sup>32</sup> *Id.* art. 75.1.

<sup>33</sup> *Id.* art. 75.2.

<sup>34</sup> *Id.* art. 75.3.

The Congress of Deputies and the Senate and, when appropriate, both houses jointly, may appoint committees on investigation on any matter of public interest.<sup>35</sup> Their findings are not binding on the courts, but their conclusions may be referred to the Public Prosecutor for further action when appropriate.<sup>36</sup> It is mandatory to appear when summoned before Parliament, subject to penalties in cases of non-compliance.<sup>37</sup>

### A. Congress of Deputies

The Congress of Deputies has a minimum of three hundred and a maximum of four hundred members.<sup>38</sup> Its members are elected via proportional representation.<sup>39</sup> The electoral district is the province.<sup>40</sup> Each electoral province is allotted a minimum initial representation and the remainder is distributed in proportion to the population; the autonomous cities of Ceuta and Melilla are each assigned one deputy.<sup>41</sup> All Spanish nationals with political rights have the right to vote and be elected.<sup>42</sup> Deputies are elected to serve four-year terms.<sup>43</sup>

The last election to the Congress of Deputies was on 26 June 2016.<sup>44</sup> The current XII Legislature (2016–present) includes the following political parties:

Parliamentary Group Popular (PP): 137

Parliamentary Group Socialista (PSOE): 85

Parliamentary Group Upodemos: 71

Parliamentary Group Ciudadanos: 32

Parliamentary Group Esquerra Republicana (ERC): 9

Parliamentary Group Basque (PNV): 5

Parliamentary Group Mixed: 11<sup>45</sup>

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<sup>35</sup> *Id.* art. 76.1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* 76.2.

<sup>38</sup> *Id.* art. 68.1; FERRERES COMELLA, *supra* note 2, at 95.

<sup>39</sup> SC art. 68.1.

<sup>40</sup> *Id.* art. 68.2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* art. 68.5.

<sup>43</sup> *Id.* art. 68.4.

<sup>44</sup> *Elecciones generales 2016, Resultados del Congreso*, EL PAIS, <https://resultados.elpais.com/elecciones/generales.html> (last visited Feb. 12, 2018), archived at <https://perma.cc/Q3R8-7VFA>.

<sup>45</sup> *Id.*

## B. Senate

Senators are elected by universal, free, equal, direct and secret suffrage.<sup>46</sup> Senators are elected through a majority system, in which voters cast votes for individual candidates.<sup>47</sup>

The requirements to stand as a candidate and be elected senator are Spanish nationality, legal age, and not having been declared legally incapacitated.<sup>48</sup>

The presence of women in the Senate has increased since the electoral reform of 2007, which imposes a balanced number of men and women in the composition of candidate lists. Currently ninety-seven senators out of a total of 266 are female.<sup>49</sup>

The Senate has a territorial representation.<sup>50</sup> There are two ways to become a senator: election by provincial constituencies or appointment by regional parliaments.

### 1. *Senators Elected by Provincial Constituencies*

Each province elects four senators. However, in the insular provinces, each island or group of islands is classed as an electoral constituency, with each of the larger islands (Gran Canaria, Mallorca and Tenerife) electing three senators and the remaining islands (Ibiza-Formentera, Menorca, Fuerteventura, Gomera, Hierro, Lanzarote and La Palma) electing one senator. The populations of Ceuta and Melilla each choose two senators.<sup>51</sup>

### 2. *Senators Appointed by Regional Parliaments (Autonomous Community)*

The appointment of senators by regional parliaments is carried out by means of indirect election, in the sense that they are not elected by the population but instead are appointed by the elected representatives of the population (the members of said parliaments).<sup>52</sup>

There is one senator for each autonomous community and another for every one million inhabitants. Therefore, the number of senators that make up this second group is variable, and the number has recently increased as a result of an increase in population.<sup>53</sup>

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<sup>46</sup> SC. art. 69.2.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Presencia de Mujeres en el Senado*, SENADO DE ESPAÑA, Dec. 13, 2017, [http://www.senado.es/web/conocersenado/temasclave/presenciamujeres/index.html?lang=es\\_ES](http://www.senado.es/web/conocersenado/temasclave/presenciamujeres/index.html?lang=es_ES), archived at <https://perma.cc/A7VL-QD9J>.

<sup>50</sup> SC art. 69.1.

<sup>51</sup> *Composicion del Senado. Eleccion y Designacion de Senadores*, SENADO DE ESPAÑA, July 19, 2016, <http://www.senado.es/web/conocersenado/temasclave/composicionsenadoelecciones/index.html>, archived at <https://perma.cc/Z7ZF-465F>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Following the June 26, 2016, election, the makeup of the Senate by party, including senators appointed by regional parliaments, was as follows:

Parliamentary Group Popular (PP): 149

Parliamentary Group Socialista (PSOE): 62

Parliamentary Group Upodemos: 20

Parliamentary Group Ciudadanos: 6

Parliamentary Group Esquerra Republicana (ERC): 12

Parliamentary Group Basque (PNV): 6

Parliamentary Group Mixed: 11

Total number of senators: 266<sup>54</sup>

### C. Legislative Process

The legislative process in each chamber is governed by its own internal rules of procedure.<sup>55</sup> The only occasions when there is joint action is for the adoption of decisions involving the Crown, such as the proclamation of the King, his heir, the provision of succession to the Crown when all the rightful lines have ended, and the appointment of the Regency.<sup>56</sup>

Legislation may be initiated by the government, the Congress of Deputies, the Senate, the assemblies of the autonomous communities, or through popular initiative.<sup>57</sup>

The government may present a bill, which first must be reviewed by the Council of Ministers (within the cabinet of the Executive Power); the Council of Ministers then submits the bill to the Congress of Deputies, accompanied by a statement setting out the necessary grounds and facts to enable them to reach a decision.<sup>58</sup>

The Congress of Deputies and the Senate submit bills pursuant to an approval process regulated in the standing orders of the houses.<sup>59</sup>

The legislatures of the autonomous communities may request that the government submit a bill before Congress.<sup>60</sup>

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<sup>54</sup> *Senadores en Activo. Distribucion por Grupos Parlamentarios*, SENADO DE ESPAÑA, <http://www.senado.es/web/composicionorganizacion/senadores/composicionsenado/senadoresenactivo/consultagrupoparlamentario/index.html> (last visited Feb. 13, 2018), archived at <https://perma.cc/Y4JK-7QNU>.

<sup>55</sup> SC art. 89.1.

<sup>56</sup> *Id.* arts. 57, 59, 60.1.

<sup>57</sup> *Id.* art. 87.

<sup>58</sup> *Id.* art. 88.

<sup>59</sup> *Id.* art. 87.1.

<sup>60</sup> *Id.* art. 87.2.

A popular initiative requires at least 500,000 authenticated signatures and cannot relate to certain matters, such as taxation, international affairs, or the prerogative of granting pardons.<sup>61</sup>

For ordinary laws, once a bill is proposed and accepted during a plenary session of the Congress of Deputies, it is debated by the members to determine whether it is accepted, rejected or amended.<sup>62</sup> Once the text of the bill is approved, it is submitted by the President of the Congress of Deputies to the Senate, which then follows a similar procedure.<sup>63</sup>

With respect to organic laws—those that implement fundamental rights and public freedoms, approve the statutes of autonomous communities, approve the general electoral system, and other legislation designated as such<sup>64</sup>—the approval, amendment and repeal of bills require the vote of the majority of the Congress and the Senate.<sup>65</sup>

The legislative process generally concludes with the promulgation of the law by the King within fifteen days after the bill was approved by the Cortes Generales.<sup>66</sup> A law becomes effective twenty days after its publication in the Official Gazette, called *Boletín Oficial del Estado* (BOE), unless otherwise provided in the law.<sup>67</sup>

In general, international treaties and agreements are negotiated and signed by the government and ratified by the Cortes Generales, which must be immediately informed of the signature of all treaties.<sup>68</sup> The following treaties require prior authorization of the Cortes Generales:

- Treaties of a Political Nature
- Treaties of a Military Nature
- Treaties affecting the territorial integrity of the State or the fundamental rights and duties guaranteed by the SC
- Treaties creating financial liabilities for the Public Treasury
- Treaties involving amendments or repeal of laws or requiring legislative measures for their implementation<sup>69</sup>

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<sup>61</sup> *Id.* art. 87.3.

<sup>62</sup> *Id.* art. 90.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* art. 81.1.

<sup>65</sup> *Id.* art. 81.2.

<sup>66</sup> *Id.* art. 91.

<sup>67</sup> CÓDIGO CIVIL [CIVIL CODE], Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil art. 2.1, BOE, July 25, 1889, <https://www.boe.es/buscar/pdf/1889/BOE-A-1889-4763-consolidado.pdf>, archived at <https://perma.cc/PAQ5-8CXM>.

<sup>68</sup> SC art. 94.2.

<sup>69</sup> *Id.* art. 94.

#### D. Constitutional Amendment

The SC may be amended through two types of procedure, depending on the nature of the amendment. The ordinary procedure may be used for a partial amendment not affecting matters related to fundamental rights and freedoms of the Spanish people.<sup>70</sup> In this case, the amendment requires the vote of the majority of three-fifths of the members of each house.<sup>71</sup> Once the amendment is adopted by the Cortes Generales, it must be ratified by referendum.<sup>72</sup> In the case of total amendment, or where an amendment affects fundamental rights and freedoms of the Spanish people, the revision must be approved by a two-thirds majority of the members of each chamber, and the Cortes Generales is immediately dissolved.<sup>73</sup> The newly elected chambers must ratify the decision and examine the new constitutional text, which will only be approved with a two-thirds majority vote in both houses.<sup>74</sup> Once the amendment is approved, it must be submitted for ratification through referendum.<sup>75</sup>

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<sup>70</sup> *Id.* arts. 167, 168.

<sup>71</sup> *Id.* art. 167.

<sup>72</sup> *Id.* art. 167.3.

<sup>73</sup> *Id.* art. 168.1.

<sup>74</sup> *Id.* art. 168.2.

<sup>75</sup> *Id.* art. 168.3.

# Gulf Cooperation Council Countries

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**SUMMARY** The Gulf Cooperation Council (GCC) consists of the six member states—the United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar, and Kuwait. The main objective of the GCC is to strengthen the coordination, integration, and interconnection between the member states. The administrative structure of the GCC consists of three bodies: the Supreme Council, the Ministerial Council, and the Secretariat General. Citizens of the GCC countries may become members of the legislative branch of their country through elections or appointment by the ruler of the state. Conditions for membership in the legislative branches of the GCC countries are often cited in the constitutions of each state. The legislative branches of these countries share similar structures; however, the number of members of parliament vary. The main tasks of each legislative branch is to approve the general budget, pass laws, and question the performance of the executive branch. Bills may be initiated by the King/Prince, members of the Cabinet, or Parliament, and are then referred to the Parliament for discussion and voting. After the Parliament passes the bill, it must be approved by the King or Prince to become law. The King or the Prince has the authority to issue royal decrees that have the same effect as laws. Parliaments of the GCC countries use either simple majorities or absolute majorities to achieve a quorum in legislative sessions and to pass legislation.

## I. Introduction

The Gulf Cooperation Council (GCC) consists of the six member states, all monarchies: (1) the United Arab Emirates (UAE), (2) the Kingdom of Bahrain, (3) the Kingdom of Saudi Arabia, (4) the Sultanate of Oman; (5) the State of Qatar; and (6) the State of Kuwait. The Council was established in Abu Dhabi, UAE in 1981; however, its headquarters are located in Riyadh, Saudi Arabia.<sup>1</sup>

The main objective of the GCC is to strengthen the coordination, integration, and interconnection between member states by unifying laws and regulations in the fields of economic and financial affairs, commerce, customs and tariffs, communications, education, and security.<sup>2</sup>

Three bodies constitute the administrative structure of the GCC: the Supreme Council, the Ministerial Council, and the Secretariat General. The Supreme Council, the highest authority of the GCC, is made up of heads of the member states. The Ministerial Council consists of the foreign

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<sup>1</sup> *Member States*, GCC, <http://www.gcc-sg.org/en-us/AboutGCC/MemberStates/Pages/Home.aspx> (last visited Dec. 4, 2017), archived at <https://perma.cc/K6SK-MLSD>.

<sup>2</sup> GCC Charter art. 4 (May 25, 1981), <http://www.gcc-sg.org/en-us/AboutGCC/Pages/Primarylaw.aspx>, archived at <https://perma.cc/UT9F-YA9Y>.

ministers or other delegated ministers. The Supreme Council appoints the Secretary-General. The Secretary-General must have been a citizen of one of the GCC countries for at least three years.<sup>3</sup>

This report discusses (1) how individuals become members of the legislative branches of the GCC member states; (2) conditions of membership; (3) the purpose and powers granted to those legislative branches by the constitutions of each country; and (4) the structure of those legislative branches. It also provides a comparative analysis of the legislative process of each of the GCC countries.

### Gulf Cooperation Council (GCC) Countries



**Source:** Created by the Law Library of Congress.

<sup>3</sup> *About GCC: Organizational Structure*, GCC, <http://www.gcc-sg.org/en-us/AboutGCC/Pages/OrganizationalStructure.aspx> (last visited Dec. 4, 2017), archived at <https://perma.cc/2Z6S-M5UE>.

## II. Membership

### A. Election versus Appointment

Citizens of the GCC countries may become members of their respective legislative branches through election or appointment by the ruler of the state. Each member represents a geographical area. There are no political parties involved in the parliamentary elections.

In the Kingdom of Saudi Arabia all members of the legislative branch are appointed by the King. The process of parliamentary elections does not exist. Article 7 of Royal Decree No. A/91 of 1992, known as “the Law on Shura Council,” states that the King selects members of the Council if any vacancy is available.<sup>4</sup> Fifty percent of the Council’s membership must be replaced by newly selected members every four years.<sup>5</sup>

As opposed to Saudi Arabia, citizens of Kuwait and the UAE choose their members of Parliament through a regular process of parliamentary elections. According to article 80 of the Constitution of Kuwait, members of the National Assembly are to be elected directly by universal suffrage and secret ballot.<sup>6</sup> The assembly has sixty-five members, including fifty members who are elected for four-year terms of office and fifteen cabinet ministers appointed by the Emir.<sup>7</sup> Likewise, article 1 of Decree No. 4 of 2006, issued by the Supreme Council of the Federalism of the UAE, provides that members of the Federal National Council are to be elected through secret ballots.<sup>8</sup> Based on article 72 of the UAE Constitution, the term of membership in the Council is two years counted from the date of the Council’s first meeting.<sup>9</sup>

In other GCC countries such as Bahrain and Oman, members of the lower chamber are elected; however, members of the upper chamber are appointed by the King or the Sultan. To illustrate, article 42(2) of the 2002 Constitution of the Bahrain allows the King to invite the public for the

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<sup>4</sup> Royal Decree No. A/91 of 1992 on Shura Council, *amended by* Royal Order No. A/26 of 2005, issued on 2/3/1426 Hijri corresponding to Apr. 11, 2005, <https://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Laws+and+Regulations/The+Shura+Council+and+the+rules+and+regulations+job/Shura+Council+Law/>, archived at <https://perma.cc/3BKL-UPET>.

<sup>5</sup> *Id.* art. 13.

<sup>6</sup> CONSTITUTION OF THE STATE OF KUWAIT, Nov. 11, 1962, reinstated in 1992, art. 80, available at <http://www.constitutionnet.org/sites/default/files/Kuwait%20Constitution.pdf>, archived at <https://perma.cc/7L48-V433>.

<sup>7</sup> Ahmed Aly Khedr, *Kuwait’s Legal System and Legal Research*, GLOBALEX (Jan./Feb. 2010), <http://www.nyulawglobal.org/globalex/Kuwait.html#administrativestructureofnationassembly>, archived at <https://perma.cc/8NDL-H3N6>.

<sup>8</sup> Decree No. 4 of 2006 of the Supreme Council of the UAE Concerning the Method of Selecting the Representatives of the Federal National Council, art. 1, issued Aug. 10, 2006, available at <http://qistas.com/legislations/uae/view/22266> (in Arabic), archived at <https://perma.cc/7JHK-2R36>.

<sup>9</sup> CONSTITUTION OF THE UNITED ARAB EMIRATES of 1971, *as amended in 2004*, art. 72, available at [https://www.constituteproject.org/constitution/United\\_Arab\\_Emirates\\_2004.pdf](https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf), archived at <https://perma.cc/TU9K-TNY7>.

elections of the members of the Council of Representatives (lower chamber).<sup>10</sup> The term of Parliament is four calendar years counted from the date of its first meeting.<sup>11</sup> This rule applies to all parliaments of the GCC. Article 33 of the Bahraini Constitution grants the King the right to appoint all members of the Shura Council the (upper chamber). Likewise, article 11 of Omani Royal Decree No. 86 of 1997 provides that members of the State Council (upper chamber) are appointed by royal decree.<sup>12</sup> Article 21 of the Decree No. 86 stipulates that members of the Shura Council (lower chamber) are appointed via parliamentary elections. Every member of the Shura Council represents a geographic district.<sup>13</sup> Members of the Shura Council are elected for a period of four years according to article 58bis 11 of the Omani Constitution.<sup>14</sup>

Finally, based on article 77 of the Constitution of Qatar, the Prince must appoint fifteen members of the Shura Council and the rest are elected.<sup>15</sup> However, based on news reports, the Prince currently appoints all members of the Council. Parliamentary elections have been postponed for decades. In June 2016, the Prince extended the term of the Shura Council for another three years, effectively postponing legislative elections until at least 2019.<sup>16</sup>

## B. Conditions of Membership

Conditions of membership in the legislative branch of the GCC countries are often established in the constitutions of each state. Candidates for parliamentary elections in the GCC countries must meet the following common requirements:

- They must not have dual citizenship
- They must be fluent in reading and writing the Arabic language

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<sup>10</sup> CONSTITUTION OF THE KINGDOM OF BAHRAIN of 2002, art. 42(2), AL-JARIDAH AL-RASMIYAH (official gazette) vol. 2517, available at <http://www.wipo.int/edocs/lexdocs/laws/en/bh/bh020en.pdf>, archived at <https://perma.cc/8ZBB-2RNC>.

<sup>11</sup> *Id.* art. 33.

<sup>12</sup> Royal Decree 86 of 1997, art. 11, issued Dec. 16, 1997, available on the official website of the Omani Shura Council, at <http://www.oit.org/dyn/natlex/docs/ELECTRONIC/83508/92277/F2092950230/OMN83508.pdf>, archived at <https://perma.cc/27PK-CXCW>.

<sup>13</sup> *Id.* art. 21.

<sup>14</sup> Royal Decree No. 101/96 promulgating the Constitution of Oman of 1996, art. 58bis 11, AL-JARIDAH AL-RASMIYAH vol. 587, available at [https://www.constituteproject.org/constitution/Oman\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Oman_2011.pdf?lang=en), archived at <https://perma.cc/WQ2A-NWMV>.

<sup>15</sup> CONSTITUTION OF THE STATE OF QATAR of 2004, art. 77, issued June 08, 2004, AL-JARIDAH AL-RASMIYAH vol. 6, June 8, 2005, available at [https://www.constituteproject.org/constitution/Qatar\\_2003.pdf?lang=en](https://www.constituteproject.org/constitution/Qatar_2003.pdf?lang=en), archived at <https://perma.cc/98HE-ZL4Q>.

<sup>16</sup> Shabina S. Khatri, *Legislative Elections in Qatar Postponed until At Least 2019*, DOHA NEWS (June 17, 2016), <https://dohanews.co/legislative-elections-in-qatar-postponed-until-at-least-2019/>, archived at <https://perma.cc/PLD8-JV2W>.

- They should not have been convicted by a final judgment in a crime involving moral turpitude or dishonesty<sup>17</sup>

Other requirements may vary from one country to another. For instance, article 82 of Kuwait's Constitution states that a candidate for National Assembly elections must fulfill the voter qualifications first in order to be qualified for membership in Parliament.<sup>18</sup> Moreover, most countries of the GCC require members of Parliament to be not less than thirty years of age, except in the UAE where the Constitution allows persons to become candidates for parliamentary elections at the age of twenty.<sup>19</sup> Finally, the Constitution of Sultanate Oman is the only Constitution in the GCC that bans active members of the security and military apparatus from membership in the State Council (the Majlis al Dawala, upper chamber)<sup>20</sup> as well as the Shura Council (lower chamber).<sup>21</sup>

### III. Formation and Powers

#### A. Formation and Number of Members

Legislative branches of the GCC share a similar structure of a chairman and one or two deputies. The leadership of the parliament (the chairman and deputies) are elected by members. The number of members of Parliament in the GCC legislative branches varies. To illustrate, the Shura Council of the Kingdom of Saudi Arabia is composed of a Chairman, a Vice-Chair, and 150 members.<sup>22</sup> There are twelve committees in the Council, covering the following issues: human rights, education, culture, information, health and social affairs, services and public utilities, foreign affairs, security, administration, Islamic affairs, economy and industry, and finance.<sup>23</sup> Similar to Saudi Arabia, the Kuwaiti Parliament has one Chairman and a Deputy Chairman.<sup>24</sup> However, the number of members of Parliament is much less in Kuwait than in Saudi Arabia; article 80 of the Kuwaiti Constitution provides that the national assembly of Kuwait shall have only fifty members.<sup>25</sup>

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<sup>17</sup> CONSTITUTION OF QATAR art. 80; CONSTITUTION OF KUWAIT art. 82; CONSTITUTION OF OMAN art. 58bis 2; CONSTITUTION OF THE UAE art. 70; CONSTITUTION OF BAHRAIN art. 57; and Shura Council Law (Saudi Arabia) art. 4.

<sup>18</sup> CONSTITUTION OF KUWAIT art. 82.

<sup>19</sup> CONSTITUTION OF THE UAE art. 70(2).

<sup>20</sup> CONSTITUTION OF OMAN art. 58bis 2.

<sup>21</sup> *Id.* art. 58bis 10.

<sup>22</sup> Saudi Royal Decree on Shura Council art. 3.

<sup>23</sup> *About Saudi Arabia: Majlis Al-Shura (Consultative Council)*, ROYAL EMBASSY OF SAUDI ARABIA, <https://www.saudiembassy.net/majlis-al-shura-consultative-council> (last visited Dec. 2017), archived at <https://perma.cc/N7KA-ARKD>.

<sup>24</sup> CONSTITUTION OF KUWAIT art. 92.

<sup>25</sup> *Id.* art. 80.

Qatar also has a smaller number of members of Parliament. Pursuant to article 77 of the Constitution, the Shura Council consists of just forty-five members.<sup>26</sup> In accordance with article 93, the Council elects a chairman and a vice-chair from among its members.<sup>27</sup> Likewise, article 68 of the UAE Constitution states that the National Assembly of the Union shall be composed of forty members, divided among the UAE's seven emirates as follows: Abu Dhabi – 8 seats; Dubai – 8 seats; Sharjah – 6 seats; Ras al-Khaimah – 6 seats; Ajman – 4 seats; Umm al-Quwain – 4 seats; and Fujairah – 4 seats.<sup>28</sup> Based on article 84 of the UAE Constitution, the Council must elect a Chairman and two Vice-Chairs from among its members.<sup>29</sup>

GCC countries such as Bahrain and Oman have bicameral legislative bodies, each of which has its own chairman and vice-chair. For example, in Bahrain the Consultative Council (Majlis al-Shura or Shura Council), which is the upper chamber of the Bahraini Parliament, has a Chairman and two Vice-Chairs.<sup>30</sup> Also, the Council of Representatives, the lower chamber, must select a Chair and two Vice-Chairs from among its members according to article 56 of Bahraini Constitution.<sup>31</sup> Each chamber is composed of forty members, for a total of eighty members of Parliament.<sup>32</sup>

Concerning Oman, its legislative branch (the Council of Oman) consists of two chambers: the Majlis al-Dawla (State Council) and Majlis al-Shura (Shura Council). The State Council has forty-eight members while the Shura Council has eighty-two members.<sup>33</sup> Based on article 58bis 4 of the Omani Constitution, members of the State Council select a Chairman and two Vice-Chairs from among its members.<sup>34</sup> Article 58bis 1 provides that members of the State Council must be selected by the Sultan from the following categories: former ministers; undersecretaries of ministries; former ambassadors; former senior judges; those who are known for their competence and experience in the fields of science, arts, and culture; professors of universities, colleges, and other institutions of higher education; dignitaries and businessmen; persons who have performed great services to the nation; and persons the Sultan chooses who do not fall under the previous categories.<sup>35</sup> Similar to the State Council, in accordance with article 58bis 12, the Shura Council (lower chamber) has a Chairman and two Vice-Chairs who are selected from among its members.<sup>36</sup>

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<sup>26</sup> CONSTITUTION OF QATAR art. 77.

<sup>27</sup> *Id.* art. 93.

<sup>28</sup> CONSTITUTION OF THE UAE art. 68.

<sup>29</sup> *Id.* art. 84.

<sup>30</sup> CONSTITUTION OF BAHRAIN art. 60.

<sup>31</sup> *Id.* art. 56.

<sup>32</sup> *Id.* art. 52.

<sup>33</sup> Khalil Mechantaf, *The Legal System and Research in the Sultanate of Oman*, GLOBALEX (July 2010), available at <http://www.nyulawglobal.org/globalex/Oman.html#theomancouncil>, archived at <https://perma.cc/FWL5-5DM2>.

<sup>34</sup> CONSTITUTION OF OMAN art. 58bis 4.

<sup>35</sup> *Id.* art. 58bis 1.

<sup>36</sup> *Id.* art. 58bis 12.

## B. Powers

The main tasks of the legislative branches of the GCC countries are to approve the general budget, pass laws, and question the performance of the executive branch. In Saudi Arabia, for instance, the Shura Council has the power to propose new legislation and amend existing legislation. The Council also has the right to request access to executive-branch documents.<sup>37</sup>

Similarly, the Kuwaiti National Assembly has the authority to debate programs issued by the executive branch and pass laws. Article 99 of the Kuwaiti Constitution states that every member of the National Assembly is empowered to submit questions to the Prime Minister and ministers in order to elucidate matters falling within their competence.<sup>38</sup> Additionally, according to article 101 of the Constitution, the Assembly has the power to take a no-confidence vote regarding any minister. A vote of no confidence in a minister may be initiated upon a petition signed by ten members of the National Assembly.<sup>39</sup>

Concerning Qatar, the Advisory Council (Al-Shura Council) approves the budget and general policy issued by of the executive branch, and evaluates the performance of the Cabinet. Article 76 of the Qatari Constitution provides that the Advisory Council approves the state's public budget and exercises the function of a "watchdog" over the executive branch of government.<sup>40</sup> Furthermore, article 110 of the Constitution stipulates that every member of the Advisory Council has the right to interrogate the ministers.<sup>41</sup> Article 111 allows a vote of no confidence in a specific minister to be discussed upon a request signed by fifteen members.<sup>42</sup>

The UAE Federal National Council has the authority to debate laws. According to article 89 of the UAE Constitution, federal bills must be considered by the Federal National Council for review and recommendations.<sup>43</sup> The Council also has the power to review and approve bilateral and international treaties. Based on article 91 of the Constitution, the executive branch is responsible for informing the Union National Council of international treaties and agreements concluded with other states and the various international organizations.<sup>44</sup> The Federal National Council has the right to question ministers' performance. Article 93 states that the Prime Minister or his Deputy, or the competent minister, must answer questions put to him by any member of the Council requesting an explanation of any matters within the Council's jurisdiction.<sup>45</sup> In March 2000, the

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<sup>37</sup> ROYAL EMBASSY OF SAUDI ARABIA, *supra* 23, para. 4.

<sup>38</sup> CONSTITUTION OF KUWAIT art. 99.

<sup>39</sup> *Id.* art. 101.

<sup>40</sup> CONSTITUTION OF QATAR art. 76.

<sup>41</sup> *Id.* art. 110.

<sup>42</sup> *Id.* art. 111.

<sup>43</sup> CONSTITUTION OF THE UAE art. 89.

<sup>44</sup> *Id.* art. 91.

<sup>45</sup> *Id.* art. 93.

Council established the Department of Research and Study to provide it with reports and studies on various social and political issues.<sup>46</sup>

The higher and lower chambers of the Bahraini National Assembly have similar responsibilities in terms of questioning ministers and members of the executive branch. Article 91 of the Bahraini Constitution allows members of the Shura Council and the Council of Representatives to direct questions at ministers to discuss matters and evaluate their performance.<sup>47</sup> Article 67(a) stipulates that members of both chambers of the Bahraini National Assembly must work together on a no-confidence vote.<sup>48</sup> Article 67(d) also provides that if the National Assembly decides by a two-thirds majority of members from both chambers that it is not possible to cooperate with the Prime Minister, the matter is submitted to the King for a decision.<sup>49</sup>

Finally, both chambers of the Council of Oman (the State Council and the Shura Council) must work jointly to pass bills related to the general budget and economic development.<sup>50</sup> Article 58bis 40 of the Constitution of Oman requires draft economic development plans and annual general budgets of the state to be referred by the Cabinet to both the State Council and the Majlis al-Shura for discussion and recommendations.<sup>51</sup> The Omani Shura Council is the only chamber that has legislative oversight of the executive branch. According to article 58bis 43, ministers may be subject to interpellation upon the request of fifteen members of the Shura Council.<sup>52</sup> Ministers are also required, under article 58bis 44, to submit an annual report to the Shura Council on the implementation stages of public projects carried out by their ministries. The same article authorizes members of the Shura Council to send questions to the Cabinet concerning issues or problems within its competence.<sup>53</sup>

## IV. Legislative Process

### A. How a Bill Becomes Law

In the GCC countries, bills may be introduced by the King/Prince, members of Cabinet, or the Parliament. They are referred to Parliament for discussion and voting. After Parliament passes a bill, it must be approved by the King/Prince to become a law. The King or Prince also has the authority to issue royal decrees that have the same effect as laws. Country details are provided below. See also Appendices 1–6 for a visual representation of the legislative processes.

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<sup>46</sup> *What is the Federal National Council?*, GULF NEWS, GOVERNMENT (May 3, 2009), <http://gulfnnews.com/news/uae/government/what-is-the-federal-national-council-1.266221>, archived at <https://perma.cc/4C34-TH54>.

<sup>47</sup> CONSTITUTION OF BAHRAIN art. 91.

<sup>48</sup> *Id.* art. 67(a).

<sup>49</sup> *Id.* art. 67(d).

<sup>50</sup> CONSTITUTION OF OMAN art. 58.

<sup>51</sup> *Id.* art. 58bis 40.

<sup>52</sup> *Id.* art. 58bis 43.

<sup>53</sup> *Id.* art. 58bis 44.

### 1. *Kuwait*

Article 71 of the Constitution of Kuwait grants the Prince the right to issue royal decrees during the period when the National Assembly is dissolved. Such royal decrees have the force of law. The decrees must be submitted to the National Assembly at its first meeting to approve them.

Article 79 requires that no bill may become a law unless the National Assembly passes it. Members of the National Assembly, including members of the cabinet have the right, under article 109 of the Constitution, to propose a bill.<sup>54</sup> Additionally, article 65 authorizes the Prince not only to propose bills and issue royal decrees that promulgate laws, but also to veto proposed bills.<sup>55</sup> Article 178 requires laws to be published in the Official Gazette before they become effective.<sup>56</sup> (See App. 1)

### 2. *Qatar*

Similarly, members of the Shura Council of Qatar have the right to propose bills. Article 105 of the Constitution of Qatar grants members of the Council the right to introduce bills. Every bill is referred to the relevant committee in the Council for further study. The article continues by stating that if the Council decides to accept the bill, it will refer it to the Cabinet for further examination. If the bill receives the approval of the Cabinet, it will be returned to the Council for voting.<sup>57</sup> Under article 106 of the Constitution, every bill passed by the Shura Council must be submitted to the Prince for approval. If the Prince decides not to approve the bill, he returns it to the Council within three months from the date of its submission, together with the reasons for his disapproval.<sup>58</sup> Article 121 of the Constitution also gives members of the Cabinet the right to propose draft legislation. It states that bills proposed by the Cabinet are submitted to the Shura Council to be debated among its members. If the Council approves, the bill is referred to the Prince for ratification and promulgation.<sup>59</sup> (See App. 2)

### 3. *UAE*

Due to its federalist governing system, the legislative process in the UAE is different from other countries in the GCC. Under the title “Initiation of General Legislation,” article 110 of the Constitution of the UAE stipulates that a bill becomes a law after the adoption of the following procedures:

- (1) The Council of Ministers (Cabinet) prepares draft legislation and submits it to the Federal National Council (the Parliament);

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<sup>54</sup> CONSTITUTION OF KUWAIT art. 79.

<sup>55</sup> *Id.* art. 109.

<sup>56</sup> *Id.* art. 178.

<sup>57</sup> CONSTITUTION OF QATAR art. 105.

<sup>58</sup> *Id.* art. 106.

<sup>59</sup> *Id.* art. 121.

- (2) After approval by the Federal National Council, the Council of Ministers submits the bill to the President of the Union for his agreement and also presents it to the Supreme Council<sup>60</sup> for its ratification; and
- (3) The President of the Union signs and promulgates the law after ratification by the Supreme Council.<sup>61</sup>

Article 110(3) provides that if the Federal National Council inserts any amendment into the bill and this amendment is not acceptable to the President of the Union or the Supreme Council, the President of the Union or the Supreme Council must refer it back to the Federal National Council.<sup>62</sup> Furthermore, article 113 of the Constitution grants the President of the Union the authority to work jointly with the Council of Ministers to promulgate necessary laws in the form of decrees, which have the force of law. Such decree-laws must be submitted to the Supreme Council within a week for assent or rejection. In the case of assent, the force of law must be confirmed and the Federal National Council must be informed accordingly. In the event of disapproval by the Supreme Council, such decree promulgating a law ceases to have the force of law.<sup>63</sup> (See App. 3)

#### 4. *Saudi Arabia*

Concerning the Kingdom of Saudi Arabia, article 23 of the Law on the Shura Council grants the Council's Speaker the right to submit bills proposed by the Council to the King.<sup>64</sup> Under article 17 of the same law every legislative proposal or amendment must be approved by both the Shura Council and the Council of Ministers before receiving the approval of the King.<sup>65</sup> If the views of both councils vary on a particular issue, the proposal/amendment must be returned to the Shura Council to decide whatever it deems appropriate, and the Council thereafter sends the bill to the King, who makes the final decision.<sup>66</sup> (See App. 4)

#### 5. *Bahrain*

In the Kingdom of Bahrain, as in other GCC countries, members of both houses of Parliament may initiate bills. A bill that is initiated by a member and rejected by the any of the chambers may not be reintroduced during the same session.<sup>67</sup> Article 70 of the Constitution stipulates that no law shall be promulgated unless approved by both the Shura Council and Council of Representatives (the National Assembly), and ratified by the King.<sup>68</sup> According to article 86, after a bill is approved

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<sup>60</sup> The Supreme Council of the Union is the board of the Union. It consists of the rulers of the nine emirates making up the federation. It is the highest authority of the Union. CONSTITUTION OF THE UAE art. 46.

<sup>61</sup> *Id.* art. 110.

<sup>62</sup> *Id.* art. 110(3)

<sup>63</sup> *Id.* art. 113

<sup>64</sup> Law on Shura Council of Saudi Arabia art. 23.

<sup>65</sup> *Id.* art. 17.

<sup>66</sup> *Id.* art. 17(2).

<sup>67</sup> CONSTITUTION OF BAHRAIN art. 71.

<sup>68</sup> *Id.* art. 70.

by both chambers, the Chairman of the Shura Council refers it to the Prime Minister, who in turn submits it to the King for ratification.<sup>69</sup> (See App. 5)

## 6. *Oman*

Oman has a similar legislative process as Bahrain. Under article 58bis 36 of the Constitution of Oman, members of the bicameral Majlis Oman (the Council of Oman), which consists of the State Council (upper chamber) and the Shura Council (lower chamber), may propose draft legislation and refer it to the Cabinet for review.<sup>70</sup> Article 58bis 35 also provides that bills prepared by the Cabinet must be referred to the Majlis Oman for approval or amendment. Upon approval by both chambers, a bill must be directly submitted to the Sultan to be promulgated.<sup>71</sup>

The Constitution of Oman sets forth a specific procedural period concerning the passage of any bill. According to article 58bis 37, bills must be referred by the Council of Ministers to the Shura Council, which must decide on the draft by approval or amendment within three months from the date of referral. Similarly, the State Council must debate the bill within forty-five days from the date of referral.<sup>72</sup> If one of the legislative chambers does not approve a bill, the aforementioned article provides that the two chambers must hold a joint meeting under the chairmanship of the Chairman of the State Council to discuss the differences between them in order to pass a final bill.<sup>73</sup>

Under the Omani Constitution, the Sultan has the authority to issue royal decrees that have the force of law. Article 58bis 39 stipulates that the Sultan may promulgate Royal Decrees that have the force of law between the sessions of the Majlis Oman and while the Shura Council is dissolved and the sessions of the State Council are suspended.<sup>74</sup> (See App. 6)

## **B. Quorum and Voting Majority**

Parliaments of the GCC countries use either a simple majority or an absolute majority to achieve a quorum in legislative sessions. They also adopt both types of majorities to pass legislation. For example, article 16 of Royal Decree No. A/198 states that meetings of the Shura Council of Saudi Arabia are not valid without a quorum of at least two-thirds of its members, including the Speaker of the Council or whoever may deputize him. Resolutions must pass with the members' majority approval.<sup>75</sup>

Under article 97 of the Kuwaiti Constitution, the presence of more than half of the members of the National Assembly is necessary for a quorum. Laws must also pass by an "absolute majority,"

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<sup>69</sup> *Id.* art. 86.

<sup>70</sup> CONSTITUTION OF OMAN art. 58bis 36.

<sup>71</sup> *Id.* art. 58bis 35.

<sup>72</sup> *Id.* art. 58bis 37.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* art. 58bis 39.

<sup>75</sup> Law on Shura Council art. 16.

meaning two-thirds of the members present in the GCC countries. Where votes end in a tie, the matter debated must be deemed rejected.<sup>76</sup>

In order to achieve a quorum in the legislative sessions of the Advisory Council of Qatar, the majority of its members must attend, including the President or his Deputy, based on article 99 of the Constitution of Qatar. If there is no quorum, the session is adjourned to the next session.<sup>77</sup> Moreover, an absolute majority is required under article 100 of the Constitution to pass a bill. It stipulates that the Council's decisions are issued by an absolute majority (two-thirds) of the attending members.<sup>78</sup>

Likewise, according to article 59 of the Constitution of Bahrain, a quorum is achieved in meetings of the National Assembly of Bahrain via the presence of more than half of its members. Regulations are passed by an absolute majority vote of the members present.<sup>79</sup>

While regulations must pass by an absolute majority of votes, the member's meetings of the Federal National Council of the UAE achieve a quorum via a simple majority. Article 87 of the UAE Constitution provides that deliberations of the Council are invalid unless at least a majority of its members are present. It continues by stating that decisions of the Council must be made by an absolute majority of the votes of members present. If votes are equally divided, the side that the Chairman of the session supports prevails.<sup>80</sup>

A simple majority is also required to achieve a quorum in meetings of the Omani Council. Members of both the Omani State Council and Shura Council must be present in those meetings, as provided by article 58bis 32 of the Constitution. If the required majority is not achieved, the meeting must be postponed.<sup>81</sup> The decisions of the Majlis Al Dawla and Majlis al-Shura must be adopted by an absolute majority of the members present. In the case of a tie vote, the side that includes the Chairman prevails.<sup>82</sup>

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<sup>76</sup> CONSTITUTION OF KUWAIT art. 66.

<sup>77</sup> CONSTITUTION OF QATAR art. 99.

<sup>78</sup> *Id.* art. 100.

<sup>79</sup> CONSTITUTION OF BAHRAIN art. 59.

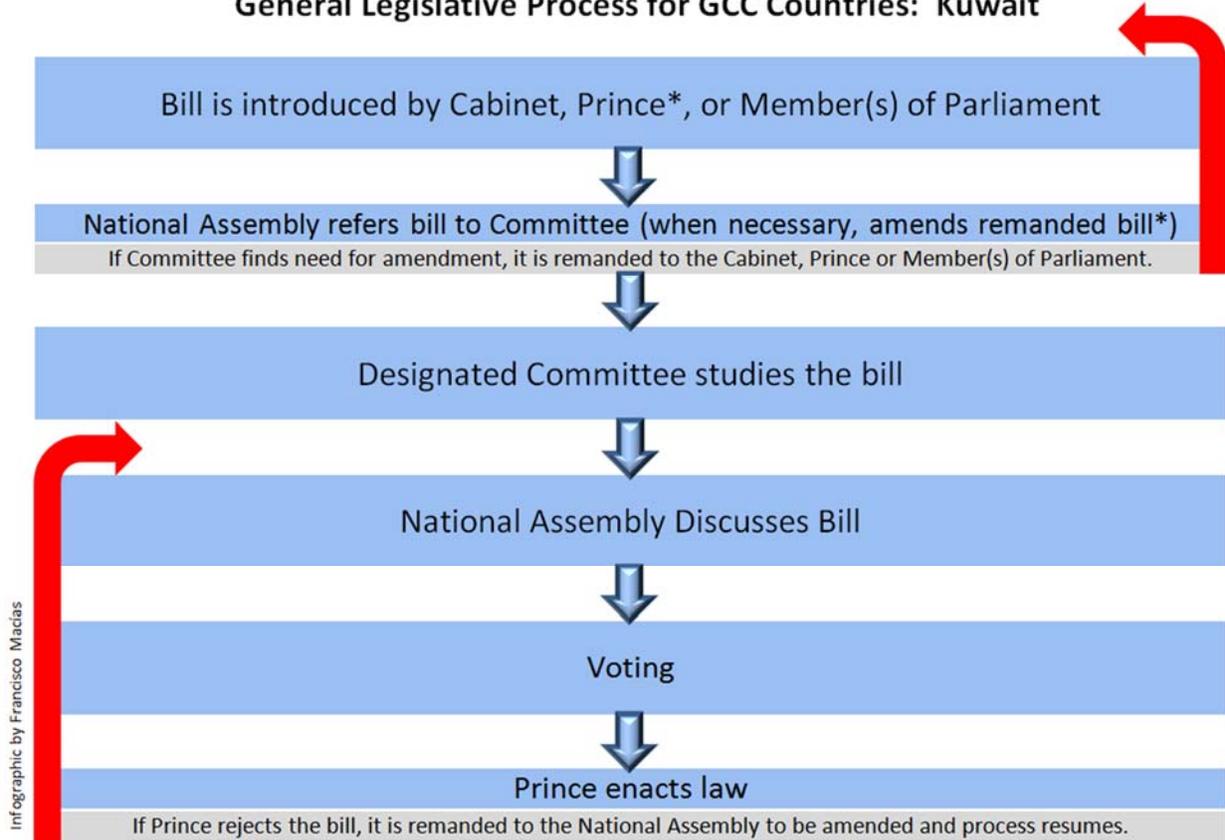
<sup>80</sup> CONSTITUTION OF THE UAE art. 87.

<sup>81</sup> CONSTITUTION OF OMAN art. 58bis 32.

<sup>82</sup> *Id.* art. 58bis 33.

**App. 1**

**General Legislative Process for GCC Countries: Kuwait**



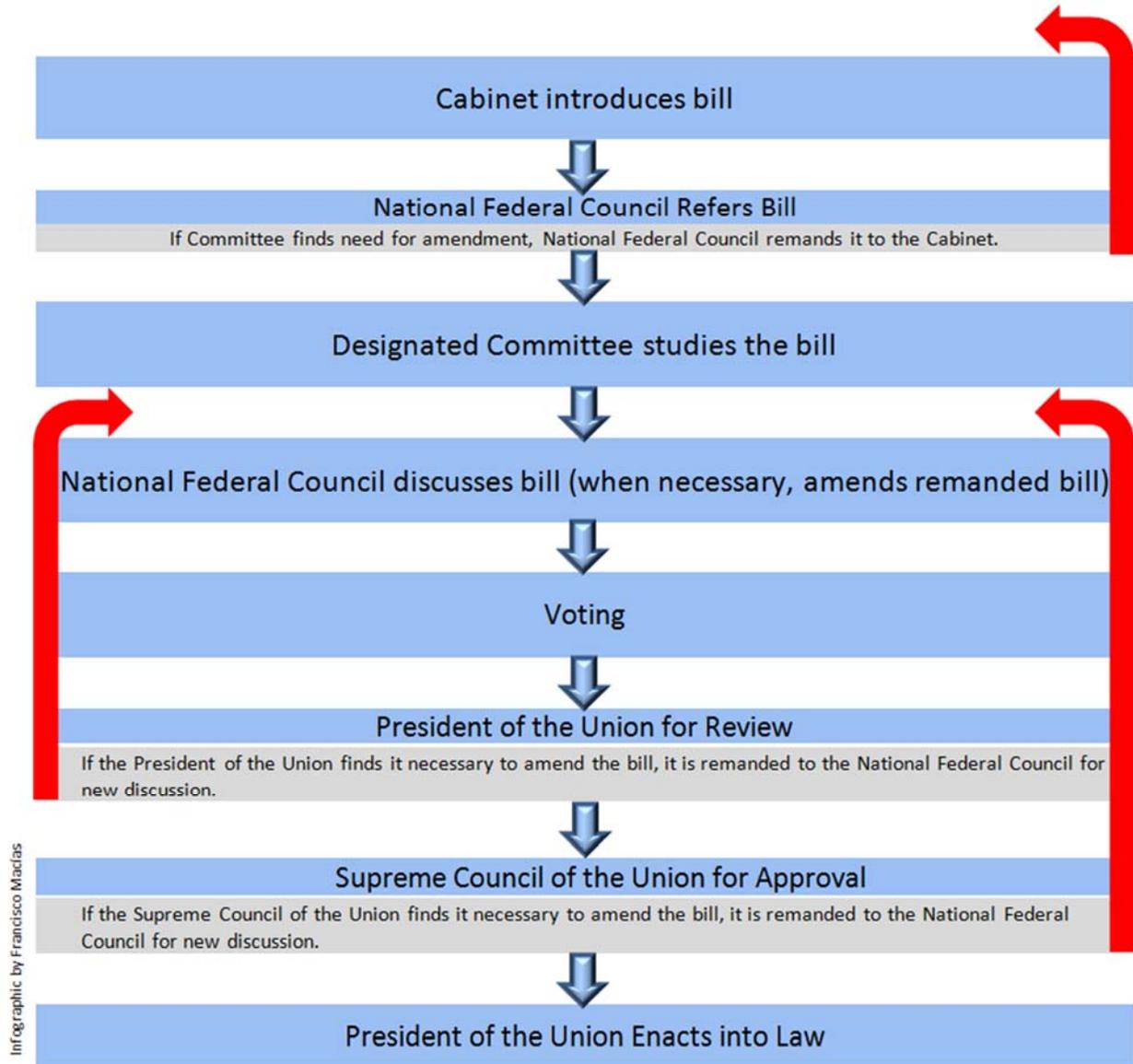
**App. 2**

**General Legislative Process for GCC Countries: Qatar**



App. 3

General Legislative Process for GCC Countries: United Arab Emirates (UAE)



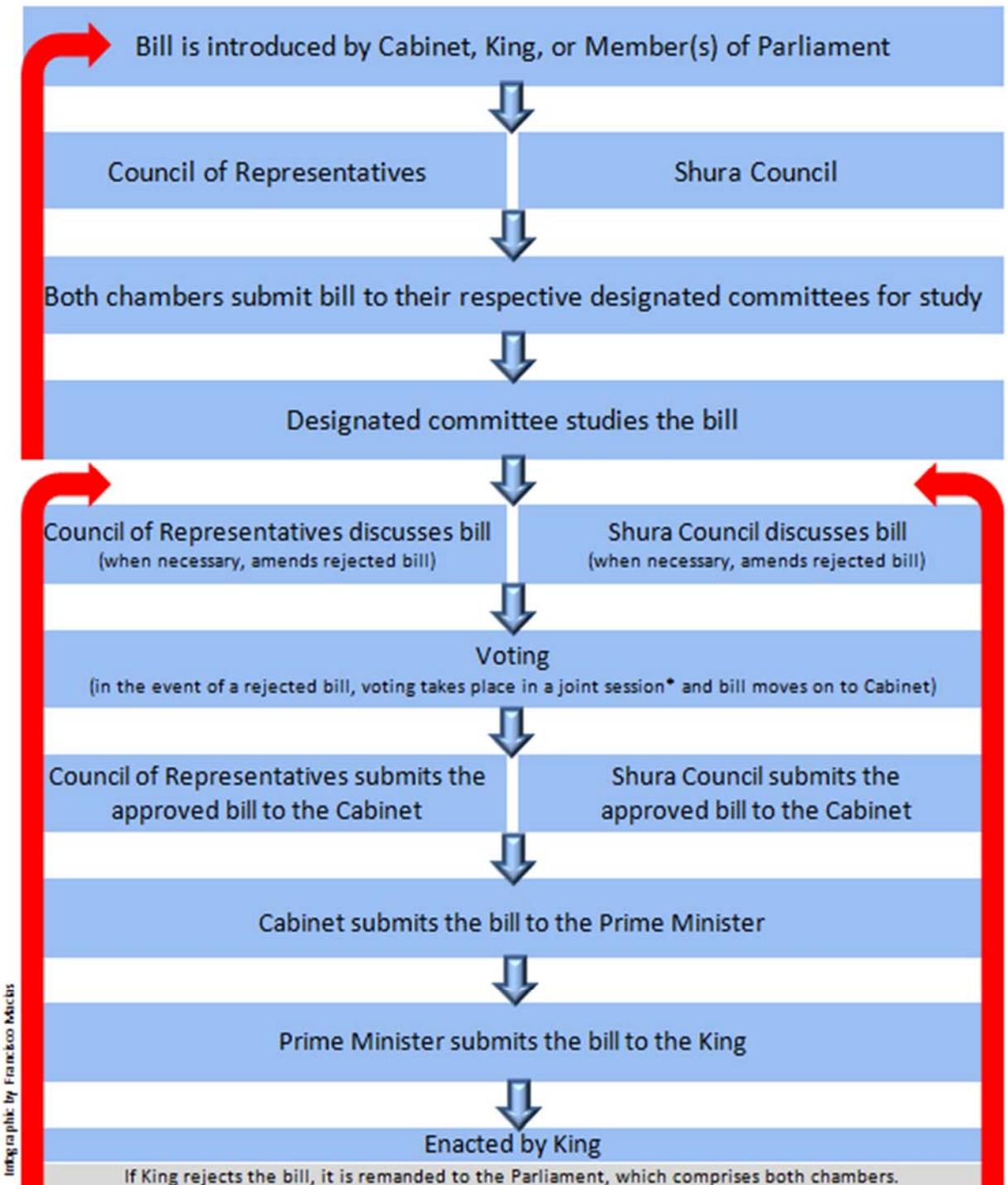
App. 4

General Legislative Process for GCC Countries: Saudi Arabia



App. 5

General Legislative Process for GCC Countries: Bahrain

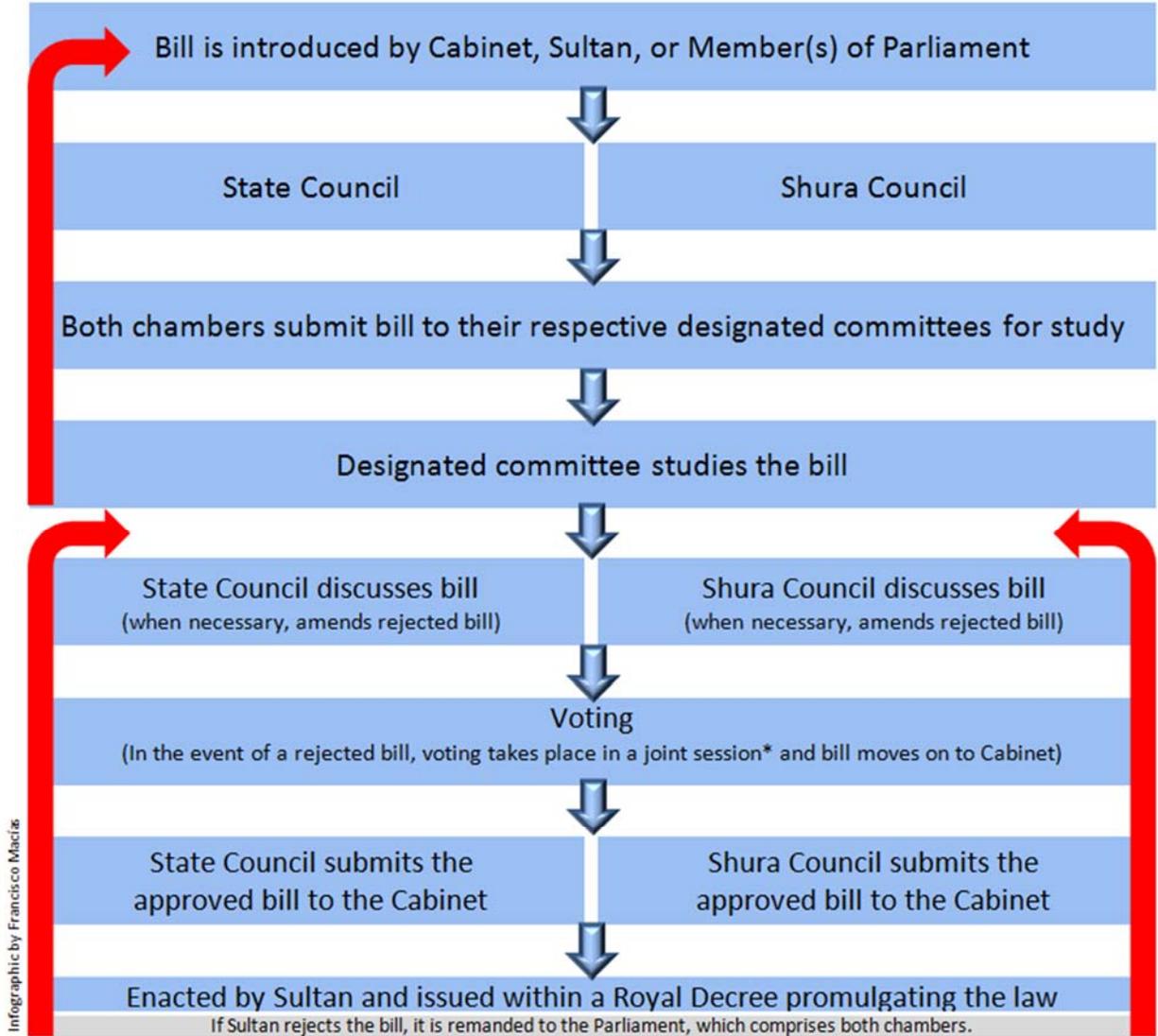


Infographic by Franco Michels

\*In cases of dissent between the two chambers, at the stage of discussion, the bill—as with rejections by the King—moves to a joint session where both chambers will reconcile their differences and move to a joint voting session.

App. 6

General Legislative Process for GCC Countries: Oman



\* In cases of dissent between the two chambers, at the stage of discussion, the bill—as with rejections by the Sultan—moves to a joint session where both chambers will reconcile their differences and move to a joint voting session.