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### Legislative Process - How Brazilian Laws are Made

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Legislative Process - how Brazilian laws are made

According to article 59 of the Brazilian Constitution, the legislative process comprises the preparation of:

- i) amendments to the Constitution;
- ii) supplementary laws;
- iii) ordinary laws;
- iv) delegated laws;
- v) provisional measures;
- vi) legislative decrees.

Each one of these normative acts follow a different legislative process; below, a few relevant comments about each of them.

#### **Constitutional amendments:**

The Brazilian Constitution was promulgated on October of 1988; by the end of 2003, it had received 43 (fourty-three) amendments.

Initiative: the Constitution may be amended by proposal of: at least one-third of the members of the Chamber of Deputies or of the Federal Senate; the President of the Republic; more than one half of the Legislative Assemblies of the units of the Federation, each of them expressing itself by the relative majority of its members. No other party can propose amendments. A proposal by Senators is first examined by the Senate; all other proposals go first to the Chamber of Deputies. The Constitution can not be amended while federal intervention, a state of defense or a state of siege is in force. No proposal of amendment shall be considered which is aimed at abolishing: the federative form of State; the direct, secret, universal and periodic vote; the separation of the Government Powers; individual rights and guarantees. These are called "clausulas petreas", or clauses which can not be changed. The "individual rights and guarantees" include all the rights listed in article 5 of Constitution; that means, for example, that neither the death penalty nor the prison for life will ever exist in Brazil, while this Constitution is in force.

To be approved, an amendment must be voted twice in each House, and obtain at least three-fifths of the total members of each House. If a House doesn't approve a proposal, it is archived; if a House modifies the proposal approved by the other, the proposal returns to the previous House, where it must be voted again.

After approved by both Houses, the amendment is promulgated by the President of the House where it was last voted. This qualified quorum is hard to get, and usually demands a coalition between several of the political parties.

#### **Supplementary laws**

This kind of law is voted only when the Constitution calls for a "supplementary law" to regulate certain matters (these laws will supplement the Constitution). For example, article 59 calls for a supplementary law to regulate the legislative process; article 146 says that a supplementary law will regulate tax matters; article 192 calls for a supplementary law to regulate the National Financial System.

Initiative. The following parties may propose a supplementary law: any member or committee of the Chamber of Deputies and the Federal Senate or the National Congress; the President of the Republic; the Supreme Federal Court; the Superior Courts; the Attorney-General of the Republic; and the citizens. The Constitution provides the manners and conditions under which party may propose the laws.

For approval by the Legislative, supplementary laws must be approved by the absolute majority of the members of each House. After Legislative approval, the law goes to the sanction of the President. The President can sanction the law, veto the entire law, or veto articles of the law. In case of veto, the law returns to Congress, which can maintain or override it; to

override the veto, it's necessary absolute majority of Deputies and Senators. In case a veto is overridden, a legislative decree must be drawn to regulate the subject of the law.

It's not uncommon for the President to veto articles of laws. It's very uncommon, however, that vetoes are overridden; actually, it's very uncommon that vetoes are even voted. From August 2000 to May 2004, not even one veto was examined; in May 2004, more than 1000 vetoes (the least controversial ones) were examined at once, and all of them were maintained.

### **Ordinary laws**

Initiative. The same as of Supplementary laws (see above).

For approval by the Legislative of an ordinary law, there must be a quorum of at least half plus one members of each House, and the proposed law must be approved by at least half plus one of the present members. After Legislative approval, the law goes to the sanction or veto of the President, following the same steps as of the supplementary laws.

### **Delegated laws**

As per article 68 of Constitution, the President can have a delegation from the Congress to draw up laws on specific matters; the same article specifies the tight conditions to be met for the Congress delegation to be issued. Only 13 delegated laws have been promulgated in the Republican History of Brazil; after the current Constitution was promulgated, only two delegated laws came to exist, to create salaries and benefits of civil servants and the military.

### **Provisional measures**

The most controversial kind of normative act in Brazilian legislation. Importance and urgency. Because provisional measures have force of law, and become effective right after publication, they should be used only in situations of importance and \*urgency\*; provisional measures, however, have been used in cases where the urgency is, at least, debatable. The next link lists some Provisional Measures converted into law from 1995 through 2001.

Comments on some Provisional Measures: MP 2176-79 has by subject the creation of a database of parties with debts with official entities; MP 2218 has by subject the salaries of the military of the Federal District; MP 2207-4 opens extraordinary budgetary credits; MP 2205 adopted measures to guarantee the functioning of services of public safety. It's not hard to see that the subjects of most Provisory Measures are of importance, but it's debatable whether these subjects could not be legislated by means of an ordinary law.

The table at the linked page also shows that a good part of the Brazilian laws were originated by a Provisional Measure. Many political analysts say that there has been an abuse of the use of Provisional Measures.

When the Constitution was promulgated, article 62, which mentions the provisional measures, was very concise: the President could issue measures, which should be voted in thirty days. Practice showed that, for several reasons (the most relevant of all is that the coalition which supported the President had no interest in contradicting him), the measures were not voted (and, according to the original text, the measure should lose effectiveness); the Executive found a way around that: when the measure was about to decay, a new measure, with the exactly same text, was issued; at first, the new measure was given a new number, but over time a more refined technique was employed: measures would gain a version descriptor (e.g. MP 1430-2, MP 1430-3, MP1430-4, etc).

In 2001, the Constitutional Amendment #32 was approved, giving to article 62 the current text. Several matters were expressly prohibited from being regulated by MPs; the MPs should be examined in sixty days (a longer period was given to Congress), but only one extension would be allowed. The declared objective of the amendment was to try to prohibit the use of MPs by the President: he should issue less MPs, and those should be examined quicker by the Congress, which would gain back their legislative power.

However, the new reality now is: the President still issues plenty of MPs, with little regard to urgency; because MPs are not examined in 45 days, the Houses have to stop deliberations of all other matters; MPs are voted quickly to comply with deadlines, usually being approved because of the influence of the President; when a batch of MPs is converted, a new batch is right around the corner, waiting to be voted again.

**Legislative decrees** Legislative decrees are acts of administrative nature which materializes deliberations of the Congress about matters of their own competence. Legislative decrees do not need the sanction of the President (and this difference sets legislative decrees apart from laws). Examples of legislative decrees: when a law is declared unconstitutional by the Supreme Court, it's up to Congress to remove the law from the juridic scenery, and the instrument to do so is the legislative decree; likewise, when a provisional measure is rejected or decayed, the effects of the measure will be disciplined by means of a legislative decree.

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