

New Frontiers of Comparative LAW

Tong Io Cheng (Editor)
Salvatore Mancuso (Co-editor)



澳門大學
UNIVERSIDADE DE MACAU
UNIVERSITY OF MACAU

 LexisNexis

of MCC). With reference to the remaining sources, I repeat what we have previously stated about them when I generally characterised the Romano-Germanic Law model (as it remains valid for Macao): the irrelevance of custom, in general; the significant role of jurisprudence (case law) and doctrine (legal theory) as creative agents of law, in spite of the dominance of statutory law.

The Commercial Code and Comparative Law: A Happy Marriage?

Augusto Teixeira Garcia

Associate Professor, Faculty of Law, University of Macau (Research fields: commercial law, company law and intellectual property law)

INTRODUCTION

This paper aims to give a brief account of the influence of comparative law in the drafting of the Commercial Code of Macau.¹ The approach that we will take is rather perfunctory, and will take in consideration commercial law as an autonomous discipline within legal systems of Roman-Germanic origin and its regulation in different laws. We call our approach perfunctory because we do not want to discuss each and every aspect where comparative law influences or reflects the Commercial Code of Macau; rather, our goal is to stress a few of the more relevant and significant aspects of this influence. Nevertheless we hope that the reader will in the end get a broad perspective of the roots of Macau's commercial law.

The article is divided in six parts: the first is dedicated to explain the so-called localisation process; the second gives a summary description of the legal environment in Macau before the 1999 Handover in the area of commercial law; the third will show the divergence that (mainly after April 1974) has kept growing between Portugal and Macau in this field of law; the fourth, which represents the most substantial part of this paper, will present the general trends of the reform, and to identify the most relevant examples of comparative law, both of civil law and common law origin, that have been taken in consideration to the draft of legal solutions; the fifth will give some references to the influence that the Commercial Code had in the reform of commercial laws in other countries, e.g., Mozambique and East-Timor; the six is a brief conclusion.

MACAU'S LOCALISATION PROCESS

Macau is a tiny city in the Pearl River Delta in the South China Sea, where the Portuguese arrived some 500 years ago and until 1999, had been ruled by a Portuguese Administration, although there were no issues about its sovereignty

¹ Enacted by Decree-Law no. 40/99/M, of 3 August, gazetted in BOM (the Macau official gazette) 31/1999, of 3 August, to enter in force on 1 October 1999, deferred to 1 November 1999, by Decree-Law no. 48/99/M, of 27 September, gazetted in BOM 39/1999, of 27 September, as amended by Law no. 6/2000, of 26 April, gazetted in BOM 17/2000, of 27 April, and Law no. 16/2009, of 28 July, gazetted in BOM 32/2009, of 10 August.