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策略發展委員會
管治及政治發展委員會
行政長官產生辦法及
立法會產生辦法最終普選模式初探及相關議題

引言

根據香港實際情況，循序漸進發展政制，最終達至普選，是《基本法》確立的目標^{註1}。

2. 專責小組第五號報告中提到，政府致力與社會各界攜手多方面為早日達至最終普選目標創造有利的條件。正如政務司司長在《施政報告》致謝議案動議辯論的致辭中提出，政府會在四個層次推動香港的政制發展：

- (一) 提出二零零七年行政長官及二零零八年立法會產生辦法建議方案，增強兩個選舉辦法的民主元素。根據建議方案，將有超過四百名的選舉委員會委員是由直選產生的立法會及區議會議員。至於十個新增立法會議席，五個將由地區直選產生及五個由區議員互選產生。超過三百萬的登記選民將因而被納入兩個選舉產生辦法的選民基礎。各參政團體亦有更大空間讓更多新血參與選舉委員會和立法會的工作。

註1 《基本法》第四章及有關附件具體規定了特區的政治體制。《基本法》第四十五條規定“香港特別行政區行政長官在當地通過選舉或協商產生，由中央人民政府任命。行政長官的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生的目標。”《基本法》第六十八條規定“香港特別行政區立法會由選舉產生。立法會的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至全部議員由普選產生的目標。”

(二) 在策略發展委員會之下成立管治及政治發展委員會，研究如何在符合《基本法》的原則和規定下實行普選。

(三) 加強區議會的職能，以推動地方行政的發展。政府將在二零零六年第一季發出有關諮詢文件。

(四) 政府亦會在二零零六年第二季發出有關進一步發展政治任命制的諮詢文件。

3. 本文件旨在提供背景資料，方便委員會探討在符合《基本法》的原則和規定下，行政長官及立法會產生辦法實行最終普選的可能模式。

行政長官產生辦法最終普選模式初探

4. 《基本法》第四十五條規定：“香港特別行政區行政長官在當地通過選舉或協商產生，由中央人民政府任命。行政長官的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生的目標。”按此規定，當行政長官產生辦法實行普選方式時，行政長官的產生及任命涉及三個步驟：

(一) 由有廣泛代表性的提名委員會按民主程序提名；

(二) 提名後，候選人以普選方式產生；及

(三) 由中央人民政府作出任命。

提名委員會的組成

5. 根據上述規定，提名委員會的組成須具廣泛代表性，但《基本法》並未就提名委員會的具體組成作出規定。在考慮提名委員會的組成時，我們須考慮兼顧社會各階層的利益及有利於資本主義經濟的發展等原則^{註2}。我們認為可考慮的大方向包括：

(一) 以《基本法》附件一的規定的選舉委員會的組成作為未來提名委員會的組成的藍本。原因是《基本法》附件一所規定的選舉委員會，已包含兼顧社會各階層參與的元素；或

(二) 以其他具廣泛代表性的方式組成提名委員會。

普選方式產生及中央任命

6. 我們可以考慮行政長官候選人於提名委員會按民主方式提名後，以一人一票普選方式產生。產生後由中央人民政府任命。

7. 總體而言，行政長官產生辦法達致普選目標的模式，《基本法》已提供相對清晰的框架。

立法會產生辦法最終普選方式初探

8. 《基本法》第六十八條規定：“香港特別行政區立法會由選舉產生。立法會的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至全部議員由普選產生的目標”。根據《基本法》附件二規定，第三屆立法會由30名功能團體選舉的議員和30名分區直接選舉的議員組成。倘若專責小組第

註2 姬鵬飛主任在一九九零年三月二十八日第七屆全國人民代表大會第三次會議上發表關於《基本法(草案)》及其有關文件的說明中指出，香港特別行政區的政治體制，要符合“一國兩制”的原則，要從香港的法律地位和實際情況出發，以保障香港的穩定繁榮為目的。為此，必須兼顧社會各階層的利益，有利於資本主義經濟的發展；既保持原政治體制中行之有效的部分，又要循序漸進地逐步發展適合香港情況的民主制度。

五號報告提出的建議方案獲得通過，二零零八年第四屆立法會將由 35 名功能團體選舉的議員和 35 名分區直接選舉的議員組成。

9. 自立法機關(即前立法局)在一九八五年首次引入選舉產生的議員以來，功能界別在過去二十年一直是香港政治體制組成的部分。功能界別讓社會上具分量、並對香港具有重要貢獻的不同界別能夠在立法會內有代表聲音。透過功能界別的形式，社會上不同階層及團體，包括勞工、教育界、各專業界別、以至各工商界團體，都可有機會參政，達到兼顧社會各階層利益的目標。

10. 在邁向立法會最終普選的過程中，我們其中一項須仔細研究的重點課題，是功能團體的未來路向。在專責小組所收集的意見當中，有意見建議應考慮設立「兩院制」(第五號報告第 5.31 段)，可讓功能團體的意見可透過第二議院得到反映，令立法工作的程序可更充份吸納社會上不同的聲音及利益。另一方面，有意見認為《基本法》第六十八條已規定立法會最終達至全部議員由普選產生的目標，而《基本法》的設計似乎是基於「單院制」的設計，而沒有考慮到「兩院制」的安排。

11. 在考慮立法會達至全面普選時，我們須顧及香港的特別需要、訴求及歷史現實。《基本法》附件二有關立法會對法案和議案的表決程序，對將來立法會最終實行普選的模式具有參考價值。姬鵬飛主任在 1990 年 3 月 28 日關於《基本法》(草案)及其有關文件的說明亦提及，附件二關於立法會對法案和議案的表決程序的規定“有利於兼顧各階層的利益，同時又不至於使政府的法案陷入無休止的爭論，有利於政府施政的高效率”。

12. 事實上，世界各地亦採用了眾多不同的議會模式組成其立法機關。有不少民主歷史較悠久的地方採用兩院制。舉例來說，美國參議院的組成並不是按人口比例分配議席，而是以各州為代表，而眾議院議席則大致按人口比例分配議席。加拿大的眾議院由普選產生，但其具有立法權力的參議院是由委任產生的。另一方面，亦有西方民主國家，例如新西蘭，實行單院制。有關其他地方議會實行兩院制的方式，以及其兩院的權力分配的例子，載於附件供參考。

考慮議題

13. 立法會最終普選的模式應符合《基本法》所規定的“兼顧社會各階層利益”，與及“有利於資本主義經濟的發展”的原則。在這大前提下，委員會可考慮下列議題：

- (一) 《基本法》附件二規定，二零零七年以後香港特別行政區立法會的產生辦法和法案、議案的表決程序，如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人大常委會備案。由於任何修改須得到立法會全體議員三分之二多數通過，實際上必須同時得到地方分區直接選舉產生和功能團體產生的議員兩方面的支持，方可成事。為社會內部早日就立法會邁向全面普選達至共識，我們須考慮可如何維持「均衡參與」的原則。
- (二) 倘若立法會普選的最終模式實行「單院制」，所有議席由地方分區直接選舉產生，香港政治人才及參政團體的成熟程度可否達至發展跨階層的參政團體，以致可確保到時立法會的組成可兼顧各階層的利益？
- (三) 倘若將來立法會採用「兩院制」，須考慮以下課題：
 - (a) 第二院的組成：哪一種產生方式最符合香港的實際情況？如果由功能團體選出的議員組成第二院，功能團體代表的產生方法是否須作改變？
 - (b) 兩院的分權：第二院應否擁有修改、延遲、或否決第一院通過的議案或修正案的權力？應否根據議案或法案的內容採取不同的表決程序(例如法案是否由政府提出的，是否涉及中央與特區的關係，是否涉及公共開支等)？當用甚麼機制調解兩院意見的分歧？

- (c) 行政效率：如果法案須由兩院通過，會否影響行政和立法效率？

總結

14. 政府就上述議題並未有任何既定看法立場。我們樂意聽取委員會成員對上述議題的看法。

政制事務局
2005 年 11 月

若干兩院制國家上議院的組成及權力 資料摘要

引言

本附件旨在介紹七個實行兩院制國家（美國、英國、法國、德國、日本、澳洲及加拿大）上議院的組成及權力，以及如何調解兩院之間的分歧。

兩院制的概況

2. 據統計，世界上約有三分一的國家實行兩院制。雖然數目上不及單院制的國家，但是不少民主歷史較悠久的國家，都是實行兩院制的。學術上，實行兩院制的理據主要包括：

- (1) 反映不同利益：在一人一票普選產生的議會之上另加一個以不同方式產生的議院，使社會上不同的利益得到充份的反映。例如在實行聯邦制的國家，上下議院一般分別代表州政府和全國民眾的利益。在另一些國家，則可能代表不同社會階層的利益；
- (2) 互相制衡：兩院代表不同的利益，可使立法機關的權力受到內在的制衡；
- (3) 保持社會穩定：由於法律得到不同利益代表的同意，能夠提高法律的代表性和認受性，有助保持社會穩定。

3. 基於歷史和國情等因素，各國上議院的組成及權力各有不同，各具特點。

4. 在上議院的組成方面，主要有世襲制、委任制、間接選舉和直接選舉四種。有些國家的上議院議員以其中一種方式產生，有些則以多種的方式產生。亦有一些國家有其獨特的組成部份，以代表社會上不同的階層，例如愛爾蘭、斯洛文尼亞有以職業劃分的代表、比利時有不同語區（linguistic communities）代表，委內瑞拉有少數族裔的代表等。

5. 在權力方面，上議院擁有的權力與其以何種方式產生並無必然關係。如加拿大的參議院議員由委任產生，但其權力卻比由直選產生的日本參議院為大。不少國家都將較大或最終的權力賦予下議院或眾議院，可是下議院沒有最終權力亦非罕見，例如荷蘭、巴西、墨西哥等以上議院或負責覆議的議院擁有最終權力；美國、加拿大、挪威、瑞士等則以兩院聯席會議的方法處理分歧。

6. 下文將扼要介紹七個實行兩院制國家上議院的組成、權力和兩院協調分歧的機制。

美國

議會組成

7. 美國的國會由兩院組成，即眾議院（House of Representatives）及參議院（Senate）。眾議院共有435名議員，以「單議席單票制」選出，選舉每兩年一次；參議院共有100名議員，每州2人，由全民直接選舉，任期為六年，每兩年有三分之一的參議員任期屆滿，其議席須與眾議院一同進行改選。

參議院的權力

8. 與其他兩院制國家的立法機關不同，美國的參議院具有立法的實權，並與眾議院享有同等地位。

9. 美國的立法權由兩院共同行使。立法提案權屬於國會兩院議員，所有法案都必須由議員在他所屬的議院提出。政府官員（包括總統）都沒有提案權，行政部門草擬的法案，只能通過一位議員提出。

10. 《美國憲法》規定，任何一院通過的法案都必須送交另一院並以一致的文本通過，因此任何一院對另一院通過的法案都擁有絕對的否決權。雖然總統同樣可以否決經參眾兩院通過的法案，但如果兩院分別以三分之二多數再次通過，就可推翻總統否決。

11. 雖然美國參眾兩院的地位相若，但兩院的權力仍有一些分別：眾議院有提出財政議案的優先權，參議院有權批准總統與外國締結的條約、同意總統提名的高級官員。當發生彈劾案時，由眾議院提出彈劾，參議院進行聆訊。

兩院分歧的調解

12. 參眾兩院通過的法案文本如有分歧，或者兩院有不同意見，只能通過協商解決。一般而言，如法案並無爭議性，兩院可以透過互相交換修正案來協調兩院文本之間的差異，直至達成一致的文本為止。如果法案具爭議性，或雙方的立場有很大的分歧，兩院會由同等數量的議員組成協商委員會（conference committee）行磋商，並提出妥協方案，再分別提交兩院通過。然而，若兩院堅持己見不願妥協，便會形成僵局，法案最終亦會因為得不到兩院的通過而變成廢案。

英國

議會組成

13. 英國國會由下議院（House of Commons）和上議院（House of Lords）組成。下議院共有 646 名議員，以「單議席單票制」由合資格公民以直接選舉選出。下議院多數黨黨魁出任首相，並組織政府。

14. 上議院議員在《1999 年上議院法》制定前並非由選舉產生，他們由世襲貴族、因傑出公共服務而獲英王冊封的終身貴族及主教所組成。為全面逐步改革上議院，英國制定了《1999 年上議院法》，世襲貴族不再自動成為上議院議員。但在法案審議期間通過的一項修訂建議，令 92 名世襲貴族可暫時保留上議院席位。但工黨政府一直強調會進一步改革上議院的組成¹。92 名世襲貴族中，有 75 名由世襲貴族之間互選產生；另外 15 個議席則由整個現屆上議院的議員選出。其餘兩個議席分別由作為女皇代表的掌禮大臣（Lord Great Chamberlain）及負責儀仗事宜的英國皇室典禮大臣（Earl Marshall）出任。而大主教、主教，及其他終身貴族在上議院的議席則維持不變。此外，英國政府在 2000 年 5 月設立獨立委員會負責提名部分上議院終身貴族及審查所有上議院議員的提名²。在 2005 年 11 月，上議院共有 733 名議員，分別為 616 名終身貴族、92 名世襲貴族以及 25 名大主教及主教。

上議院的權力

15. 上議院在立法、辯論及質詢行政當局方面的職能與下議院類同。所有的法案須經兩院通過才可生效，法案可在任何一院提出，上、下議院的議員均有權提出法案。然而受到《國會法》的制約，上議院的實際權力有限。這些制約包括：

- (1) 上議院只有「延擱權」而沒有「否決權」。換句話說，即任何法案經下議院通過後，上議院只可拖延但不能阻止這些法案成為法律。上議院可以把法案拖延大約一年，期滿後，下議院可以在下一立法年度再次通過法案，然後直接送君主批准。

1 英國工黨政府提出改革上議院的組成，建議日後上議院部份成員由直接選舉產生，並取消世襲制議席。建議目前正在諮詢階段，仍未落實。

2 除獨立委員會外，首相有權推薦政黨或其他人仕成為終身貴族，晉身上議院。

- (2) 上議院不能提出涉及財政或稅收的議案，這些議案只能由下議院提出；而且經由下議院通過的稅收議案，上議院不得修改和否決。不管上議院同意與否，這些議案都會在送交上議院後一個月內成為法律。

兩院分歧的調解

16. 英國的兩院並沒有設立特別的機制或委員會去處理分歧。如兩者對法案有不同意見，上議院可以利用「延擱權」來達到修改或否決法案的目的。藉著拖延法案，上議院可以對議案進行充份的辯論和詳細的審議，並提出修改的意見。如果下議院不採納上議院的意見，上議院可繼續利用拖延議案生效的權力來對下議院施加壓力，促使下議院修改議案。實踐上，上議院的意見大部份都能被下議院和政府接受。自 1949 年以來，只有四項條例未得上議院的同意而成為法律。

法國

議會組成

17. 法國議會由國民議會（National Assembly）及參議院（Senate）所組成。國民議會由577名代表組成，議員以「單席位單票制」直接選舉產生，選區按人口比例劃分。國民議會的多數黨負責組織政府。

18. 參議院現時共有331席，當中304席代表法國本土、15席代表海外各省、地方單位及領地，另外12席代表在海外的法國國民。根據2003年訂立的法例，參議員的人數將會逐步增至2010年的346席。參議員任期六年，成員每三年更新一半。參議員由選舉團通過間接選舉產生。選舉團以省市為單位，包括國民議會議員、來自各省市議會的代表，以及地方議員代表，議席數目按各省市的人口計算。選舉方法有兩種：在有四名或少於四名參議員的省市，其選舉以「簡單多數票」形式進行；而在有五名或多於五名參議員的省市，則以「比例代表制」分配議席。

參議院的權力

19. 根據《法國憲法》，參議院的職能與國民議會相若，但參議院的權力較國民議會為小，這主要反映在參議院無權否決國民議會經四讀通過的法案，以及參議院只可以對政府提出沒有約束力的不信任動議。

20. 參議院的議員與政府和國民議會的議員一樣擁有法案的提案權，但兩院議員提出的法案須接受所屬議會主席團委派的委員會進行「財政可接受性」審查，即其內容是否與國家的財政法有衝突。如果法案內容被裁定為不能接受，法案即不能提出。實踐上，被拒的法案不多；即使有問題，委員會亦會提出修改的建議，使之能通過審查。

21. 政府法案可以在兩院中任何一院提出。由於兩院的組織和程序大致相同，所以慣常的做法是考慮兩院處理中的法案數目，使兩院的工作量更為合理。

22. 《法國憲法》規定，所有法案必須在議會兩院之間依次審議，以通過一項一致的文本，因此形成「穿梭審議」的制度。當一項法案在任何一院完成一讀審議後，便轉往另一院進行一讀審議。如果第二院完全同意或沒有任何修訂並予以通過，法案便可呈交總統簽署生效。但如果第二院提出修訂，則經修訂的草案將送回第一院進行二讀，但只限涉及第二院的修正案內容。當第一院二讀通過後，草案會被再次送到第二院進行二讀。如果兩院對一項法案分別進行了兩次穿梭審議後仍無法達成一致意見，總理有權提議召集「聯合審議委員會」以調解和處理兩院的爭議（見下文 24-25 段）。

23. 在法國，財政預算的編制與決定權屬於政府，兩院對預算案均沒有否決權，而只有部分修正權，如不得提出增加國家支出或削減國家收入的修改。根據規定，在政府向議會提出財政議案後，如果國民議會在 40 天內不能通過財政議案，政府可提請參議院在 15 天內作出決定。如果參議院與國民議會的意見不一致，政府可組成兩院聯席會議擬定文本，交兩院通

過。如果兩院在 70 天內沒有作出決議，政府可以按預算議案的規定以法令的形式付諸實施。

兩院分歧的調解

24. 如果總理按規定召開「聯合審議委員會」，兩院各派出相同數目的議員參加，以期找出一個兩院都能接受的妥協的文本。委員會最後通過的法案條款將分別被送到兩院三讀表決。此時除政府或得政府同意外，任何人不得再提出修正案。

25. 如果「聯合審議委員會」未能達成一項妥協方案，國民議會仍可進行三讀。當法案未能分別在兩院三讀通過，政府可以要求國民議會進行四讀表決，無須再徵得參議院的最後認可。

德國

議會組成

26. 根據德國的《基本法》（憲法），德國的兩院分別為聯邦議院（Bundestag）和聯邦參議院（Bundesrat）。

27. 聯邦議院的議員全部由普選產生，其中一半議席以「單議席單票制」選出，另一半以比例代表制選出，每名選民均擁有兩票。2005 年 9 月改選後聯邦議院共有 614 席，較前一屆的 603 席增加 11 席。聯邦首相由聯邦議院提名及通過後組織政府。

28. 聯邦參議院由各聯邦州政府的成員組成，每州按人口擁有 3 至 6 票，各州政府可以推選相同數目的正式代表。一般來說，各州的正式代表包括州長、州財政部長，及與聯邦事務有關的州部長等。現時聯邦參議院的正式成員共有 69 人。每州派出代表所投的票意向必須相同。聯邦參議院並無任期，各州政府可隨時召回和另派代表。

聯邦參議院的權力

29. 德國聯邦參議院的權力較英國的上議院為大。聯邦參議院的角色主要是透過參與聯邦的立法和審批聯邦政府的行政管理法規，保障各州的利益。除提出對聯邦政府質詢和聽取政府報告外，聯邦參議院並無其他監督聯邦政府的職責和權力。

30. 根據《基本法》，聯邦政府、聯邦議院議員及聯邦參議院成員均有權提出法案，但聯邦參議院不得提出涉及財政方面的法案。

31. 聯邦參議院在立法方面的權力視乎法案的類別。就憲法修正案、財政稅收、以及有關各州權利和利益的法案，必須得到聯邦參議院的通過才能生效，因此聯邦參議院對此等法案實質上擁有否決權。至於其他的法案，聯邦參議院雖然可以絕對多數或三分二多數否決聯邦議院通過的法案，但聯邦議院可以同樣的多數推翻聯邦參議院的決議。德國兩院就法案屬於那一類別常有爭議，往往要提呈聯邦最高法院裁決。

32. 此外，聯邦政府頒布的重要行政法規和行政法令，須經聯邦參議院批准方能生效，因為各州政府是這些法規和法令的主要執行機構。

33. 根據《基本法》，由聯邦政府提出的法律草案須要先呈交聯邦參議院進行第一輪審議。聯邦參議院須在 6 週之內（緊急法案 3 週之內）完成審議並提出報告及修改建議。其後聯邦政府便會將草案、聯邦參議院的議決和政府的解釋提交聯邦議院一併審議。在聯邦議院審議期間，聯邦參議院的代表須列席有關委員會及全體大會。在委員會審議階段，聯邦參議院的代表除可發言外，更可提出修改建議或動議修改，但無投票權。法案經聯邦議院三讀通過後，會再次被送到聯邦參議院進行第二輪審議。聯邦參議院必須在三個月內審議完畢。

兩院分歧的調解

34. 若聯邦參議院不同意聯邦議院通過的法案，聯邦參議院可以要求召開調解委員會，以消除和調解兩院對法案的分歧。委員會由 16 名聯邦議院議員及 16 名聯邦參議院成員（每州 1 人）組成。在委員會內，聯邦參議院的成員不受所屬州政府的指示約束。

35. 委員會的會議以閉門的形式進行，而且會議記錄至少 5 年以後才予以公開，使參與的議員免除各州政府和各自政黨的壓力，亦可以保障改變立場的議員。會議的結果會以「聯合建議」的形式公佈，建議內容有三種：一、建議取消聯邦議院已通過的法案，或提出具體修改建議，在此情況下，聯邦議院將重新審議法案；二、建議聯邦參議院確認聯邦議院已通過的法案；三、沒有一致建議，聯邦參議院須決定是否否決有關法案。

日本

議會組成

36. 日本的國會由眾議院（House of Representatives）及參議院（House of Councillors）組成，兩者都由全民普選產生。眾議院由 480 名民選議員組成，其中 300 個議席以「單議席單票制」選舉產生，其餘 180 個議席在全國 11 個選區內經「比例代表制」選出。議員的任期為 4 年，但如首相決定解散眾議院以提前舉行大選，其任期則於眾議院解散時結束。

37. 參議院共有 242 位議員，其中 146 人選自全國選區（以比例代表制選出），其餘 96 人則選自 47 個縣選區（以多議席單票制選出）。議員的任期為 6 年，半數每三年改選一次。兩院選舉中，每名選民均可投兩票，一票屬全國選區，另一票為選民所屬的選區。

參議院的權力

38. 雖然參議院和眾議院都是透過選舉產生，但參議院的權力和地位卻遜於眾議院。

39. 根據《憲法》，法案須經參眾兩院通過。《國會法》規定，立法提案權屬政府和國會議員所有。然而議員要提出議案，須得到 20 名眾議員及 10 名參議員贊成；若涉及預算的法案，則須得到 50 名眾議員及 20 名參議員贊成。政府法案可在任何一院首先提出，但《憲法》第 60 條規定，預算案須優先提交眾議院。按慣例，一切重要法案亦先須提交眾議院審議。

40. 《憲法》並沒有賦予參議院最終否決眾議院通過的法案的權力。若法案獲得眾議院通過，參議院否決，眾議院出席三分之二以上議員多數再次通過時，即成為法律。反之，參議院先議的法案，一旦被眾議院否決，便成為廢案。此外，若參議院接到眾議院通過的法案後 60 日不作決議，亦會被視為通過。至於預算案、確認條約、首相的提名、及內閣的信任議案上，眾議院的議決亦凌駕參議院。

41. 如當眾議院解散時遇上緊急情況，《憲法》規定內閣可以要求參議院召開緊急會議，並暫代行使國會全部權力。但其決議若在新一屆國會展開後十日內得不到眾議院同意，即告無效。

兩院分歧的調解

42. 若兩院對法案的意見不一，一般由兩院選出協調委員會處理，以尋求妥協方案。

43. 協調委員會由眾議院及參議院共 20 名議員組成（兩院各佔半數），並由兩院各自選出一名代表擔任協調委員會主席，兩名主席輪流主持會議。如果眾議院提出開會要求，參議院不得拒絕；相反，眾議院可以拒絕參議院的開會請求。惟對於財政預算案、承認條約和內閣總理大臣的提名等重要事項，只要參議院在指定的期間內沒有決議，協調委員會就必須召開

會議。如協調委員會達成妥協方案，兩院均不得再對此提出修訂；如委員會未能達成妥協方案，則兩名主席須向其所屬議院報告。

澳洲

議會組成

44. 澳洲國會既仿效了英國的議會模式，但在議會組織和運作上又參照了美國國會模式。

45. 澳洲聯邦議會由英國王室、眾議院（House of Representatives）和參議院（Senate）組成，眾議院議員和參議院議員都是由直接選舉產生。參議院議員為 76 人，以「比例代表制」產生，目的是使選舉結果能反映選民意向，和使細小政黨有較大機會取得議席。《澳洲憲法》規定，每州選舉 12 名參議員，澳洲首都領地和北領地各選參議員 2 人。

46. 《澳洲憲法》又規定，眾議院議員的人數應按照各州人口比例計算，而且應盡可能比參議員多一倍。每州的眾議員人數不得少於 5 人，首都地區和北部地區各為 2 人。現時眾議院共有 150 位議員，由「按選擇次序投票制」（preferential voting）產生。眾議院多數黨領袖將出任總理，並組織內閣。

參議院的權力

47. 澳洲參議院的權力較英國上議院為大，但較美國參議院為少。根據《澳洲憲法》，所有法案須經參眾兩院通過。參議員有權提出法案，但不得提出除罰款、執照費或服務費等以外有關財政或稅收的議案，亦不得提出任何法案及修正案導致國民負擔的增加。對於眾議院提交的有關財政的議案，參議院無權自行修改，只能向眾議院提出修改的建議和要求。然而眾議院拒絕修改，參議院有權拒絕三讀通過有關法案。

兩院分歧的調解

48. 澳洲兩院對解決兩院的分歧採取與其他國家截然不同的做法。根據《憲法》，若參議院兩次否決經眾議院通過的相同法案，則總督必須同時解散兩院，舉行大選。如新選出的兩院仍未能對該法案達成一致意見，總督須召集兩院聯席會議（joint sitting），經辯論後由出席會議的議員進行表決，議案或修正案須獲得絕對多數票才可通過。自澳洲立憲以來，曾有 6 次須根據《憲法》有關條文同時解散兩院，但只有在 1974 年的一次，才須要召開聯席會議進行表決³。

加拿大

議會組成

49. 加拿大的國會基本上仿效了英國的議會模式。根據《憲政法》（Constitution Act，或稱《英國北美法》，British North America Act），加拿大國會由英國王室、眾議院（House of Commons）和參議院（Senate）組成。

50. 眾議院議員全部由民選產生，選舉採「單議席單票制」，全國按人口比例劃分選區。現時眾議院共有 308 名議員，總理由眾議院多數黨領袖出任。至於參議院議員與其他西方國家上議院的產生辦法不同：他們並非由選舉產生，而是由總督按總理的建議任命，參議員的數目可以根據總理建議而有所增減，惟總數不得超過 112 名。現時參議院共有 105 名議員。

參議院的權力

51. 雖然加拿大國會仿效英國的議會模式而建立，但其參議院的權力與英國的上議院不同。根據《憲政法》，加拿大兩院有同等的立法權力，所有的法案必須在兩院都獲得通過，任何一院都可以推翻另一院的否決或修正。政府的法案可在任何

3 1974 年經聯席會議通過的法案，最後卻被最高法院裁定不符合憲法有關條文的規定而宣佈無效。

一院提出。參議院議員和眾議院議員都有提案權，但參議員不得提出涉及財政的法案，參議院對有關法案只可修改而不可增加開支。

兩院分歧的調解

52. 若參議院對一項法案提出修改的建議，眾議院必須考慮。如果兩院仍存有歧見，便需要進行協商，以尋求雙方都可以接受的方案。然而在實際運作上，加拿大參議院甚少使用否決權和修正權。

政制事務局

二零零五年十一月

**Commission on Strategic Development
Committee on Governance and Political Development**

**A Preliminary Study on the Models to be Adopted for Selecting
the Chief Executive and for Forming the Legislative Council
when Universal Suffrage is Attained and Related Issues**

Introduction

As stipulated in the Basic Law, constitutional development should be taken forward in a gradual and orderly manner towards the ultimate aim of universal suffrage in the light of the actual situation in Hong Kong^{Note 1}.

2. As mentioned in the Fifth Report of the Constitutional Development Task Force ("the Task Force"), the Government will endeavour to work together with different sectors of the community to create favourable conditions for an early attainment of universal suffrage. As pointed out by the Chief Secretary for Administration in his speech on the Motion of Thanks for the Policy Address, the Government will take forward Hong Kong's constitutional development in four aspects:

^{Note 1} Chapter 4 and the relevant annexes of the Basic Law have specifically stipulated the political system of the HKSAR. Article 45 of the Basic Law provides that "The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." Article 68 of the Basic Law also provides that "The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election. The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the Members of the Legislative Council by universal suffrage."

- (1) to put forth a package of proposals for the methods for selecting the Chief Executive ("CE") in 2007 and for forming the Legislative Council ("LegCo") in 2008 to enhance democratic elements in these two electoral methods. Under the proposals, there will be over 400 members of the Election Committee ("the EC") who are directly elected LegCo and District Council ("DC") Members. As for the ten newly added LegCo seats, five will be returned by geographical constituencies through direct elections and five will be returned through elections by DC members from among themselves. This incorporates over three million registered voters into the electorate base of both electoral methods. There will also be more room for members of political organizations to participate in the work of the EC and LegCo;
- (2) to set up a Committee on Governance and Political Development under the Commission on Strategic Development to study how to implement universal suffrage in accordance with the principles and provisions of the Basic Law;
- (3) to expand the role of the DCs to promote the development of district administration. The Government will issue a consultation document in the first quarter of 2006; and
- (4) the Government will also issue a consultation document on the further development of the system of political appointment in the second quarter of 2006.

3. This paper provides background information to facilitate the Committee's in consideration of the possible models for selecting the CE and forming the LegCo in accordance with the principles and provisions of the Basic Law when the ultimate aim of universal suffrage is attained.

Preliminary Study on the Model for Selecting the CE when the Ultimate Aim of Universal Suffrage is Attained

4. Article 45 of the Basic Law provides that "the CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly

progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” According to this provision, the selection and appointment of the CE involves three steps when universal suffrage is attained:

- (1) nomination by a broadly representative nominating committee in accordance with democratic procedures;
- (2) selection by universal suffrage following nomination; and
- (3) appointment by the Central People’s Government.

Composition of the Nominating Committee

5. According to the above provision, the composition of the nominating committee should be broadly representative. However, the Basic Law has not stipulated specifically the composition of the nominating committee. In considering its composition, we must have regard to the principles of “meeting the interests of different sectors of society” and “facilitating the development of the capitalist economy”^{Note 2}. We consider that the following broad directions could be explored :

- (1) to use the composition of the EC prescribed in Annex I to the Basic Law as a blueprint for that of the nominating committee, as the composition of the EC prescribed in Annex I to the Basic Law has included the element of meeting the interests of different sectors of society; or
- (2) to form the nominating committee through other broadly representative methods.

Note 2 In his Explanation on the Basic Law (Draft) and related documents delivered at the Third Session of the Seventh NPC on 28 March 1990, Director Ji Pengfei said that the political structure of the Hong Kong Special Administrative Region should accord with the principle of ‘One Country, Two Systems’ and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective would be maintained, a democratic system that would suit Hong Kong’s reality should gradually be introduced.

Election by Universal Suffrage and Appointment by the Central Authorities

6. We may consider an arrangement such that, after being nominated by a broadly representative nominating committee in accordance with democratic procedures, candidates for the CE election shall be elected by universal suffrage on the basis of one-person-one-vote. Thereafter, the CE shall be appointed by the Central People's Government.

7. In sum, the Basic Law has provided a relatively clear framework for the model for selecting the CE when universal suffrage is attained.

Preliminary Study on the Model for Forming the LegCo when the Ultimate Aim of Universal Suffrage is Attained

8. Article 68 of the Basic Law provides that "the LegCo of the HKSAR shall be constituted by election. The method for forming the LegCo shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all members of LegCo by universal suffrage." Pursuant to Annex II to the Basic Law, the third term LegCo shall be composed of 30 members returned by functional constituencies and 30 members returned by geographical constituencies through direct elections. If the package of proposals put forth by the Task Force in the Fifth Report is endorsed, the fourth term LegCo in 2008 shall be composed of 35 members to be returned by functional constituencies and 35 members to be returned by geographical constituencies through direct elections.

9. Since elected members were first introduced into LegCo in 1985, functional constituencies have all along been part of Hong Kong's political structure in the past 20 years. Functional constituencies enable different sectors of the community which are substantive and which have made significant contribution to Hong Kong to have a voice in the legislature. Through the system of functional constituencies, different sectors and groups in the community, including labour, education, the professions, and various industrial and commercial organizations, will have the opportunity to participate in politics, thus achieving the objective of meeting the interests of different sectors of society.

10. In moving towards the ultimate aim of forming the LegCo by universal suffrage, the future of functional constituencies is one of the key

issues which requires detailed study. Among the views received by the Task Force, there are views which suggest the setting up of a “bicameral system” in the legislature (paragraph 5.31 of the Fifth Report), so that the views of functional constituencies could be expressed through the second chamber, and that different voices and interests of the community could be more fully reflected in the legislative process. On the other hand, there are views that Article 68 of the Basic Law has already provided that the ultimate aim is the election of all the members of LegCo by universal suffrage, and that the design of the Basic Law appears to be premised on the design of a unicameral system rather than a bicameral system.

11. In considering the attainment of full universal suffrage for LegCo, we must have regard to the specific needs, aspirations and historical background of Hong Kong. The procedures for voting on bills and motions in LegCo prescribed in Annex II to the Basic Law are of referential value to the ultimate model for forming the LegCo by universal suffrage in future. In the Explanation on the Basic Law (Draft) and its related documents delivered on 28 March 1990, Director Ji Pengfei said the provisions on voting procedures on bills and motions in LegCo prescribed in Annex II “take into consideration the interests of all social strata and will prevent endless debates over government bills, thus helping the government work with efficiency.”

12. In fact, various parliamentary models are adopted by different jurisdictions in the world in forming their legislatures. Quite a number of places with a relatively long history of democracy adopt a bicameral system. For example, seats in the US Senate are not allocated on the basis of population, but on the basis of states, while seats in the House of Representatives are largely allocated on the basis of population. The House of Representatives in Canada is returned by universal suffrage, while its Senate, which is vested with legislative power, is formed by appointment. On the other hand, some western democratic countries, such as New Zealand, adopt a unicameral system. An information note on the bicameral systems adopted in other legislatures and the division of powers between the two chambers is at Annex for reference.

Issues to be Considered

13. The ultimate model for forming the LegCo shall be consistent with the principles of “meeting the interests of different sectors of society” and “facilitating the development of capitalist economy”. On this basis, members may consider the following issues:

- (1) Annex II to the Basic Law provides that if there is a need to amend the provisions with regard to the method for forming the LegCo of the HKSAR and its procedures for voting on bills and motions after 2007, they must be made with the endorsement of a two-thirds majority of all the members of LegCo and the consent of the CE, and they shall be reported to the Standing Committee of the National People's Congress ("NPCSC") for the record. As all amendments shall require the endorsement of a two-thirds majority of all the members of LegCo, in practice this means that the support of members returned by geographical constituencies through direct elections as well as those returned by functional constituencies will be required. In order to facilitate reaching early consensus in the community on attaining universal suffrage for LegCo, we need to consider how the principle of "balanced participation" could be maintained.
- (2) If a unicameral system is adopted with all seats returned by geographical constituencies through direct elections when the ultimate aim of universal suffrage is attained in LegCo, will political talents and political organizations of Hong Kong have reached maturity by then so that political organizations can represent cross-sectoral interests, thus ensuring that the composition of LegCo can meet the interests of different sectors of society?
- (3) If a bicameral system is adopted in future, the following issues should be considered :
 - (a) Composition of the second chamber: which method for forming the second chamber will be most appropriate to suit the actual situation of Hong Kong? If the second chamber is constituted by members returned by functional constituencies, should the method of returning the representatives of functional constituencies be changed?
 - (b) Division of powers between the two chambers: should the second chamber be given power to amend, delay or veto resolutions or amendments passed by the first chamber? Should different procedures for voting be adopted according to the content of the

motions or bills (e.g. whether the bill is introduced by the Government, whether it involves the relationship between the Central Authorities and the HKSAR, or whether it involves public finance)? What mechanism should be adopted for resolving differences between the two chambers?

- (c) Efficiency: will the efficiency of the executive authorities and the legislature be affected if all bills must be passed by two chambers?

Conclusion

14. The Administration does not have any established position on the above issues and is prepared to listen to the views of Committee members.

Constitutional Affairs Bureau
November 2005

Information Note :

**The Composition and Powers of the Second Chamber
in Some Countries that Adopt a Bicameral Legislature**

Introduction

This paper provides information on the composition and powers of the second chamber in seven countries that adopt a bicameral legislature, namely the United States ("US"), the United Kingdom ("UK"), France, Germany, Japan, Australia and Canada, and on how the two chambers in these countries resolve their differences.

The Bicameral Legislature

2. According to available figures, a bicameral legislature is adopted by around one-third of the countries in the world. Although this is less than the number of countries which adopt a unicameral legislature, a bicameral legislature is adopted by quite a number of countries with a longer history of democracy. In theory, the main justifications for a bicameral legislature are:

- (1) Representation of different interests : By having a chamber returned by a method different from the one returned by universal suffrage through "one-person-one-vote", different interests of the community can be fully represented. For instance, in countries with a federal system, the first and second chambers usually represent, respectively, the interests of the people nation-wide and those of state governments. In other countries, different chambers may represent the interests of different social strata.
- (2) Check and balance : The two chambers represent different interests and thus subject the powers of the legislature to internal check and balance.

- (3) Maintenance of social stability : Since legislation are approved by members representing different interests, laws will be more representative and enjoy greater legitimacy. This will help maintain social stability.

3. Due to differences in their history and national conditions, the composition and powers of the second chamber vary across different countries.

4. Second chambers are constituted mainly by four different methods, namely, through a system of inheritance, by an appointment system, through indirect elections, or through direct elections. In some countries, members of the second chamber are returned by one of the above methods, while in others they are returned through more than one method. Some countries have developed their own methods to represent different sectors in the community. For example, in Ireland and Slovenia, there are representatives for different occupational groupings. In Belgium, there are representatives for different linguistic communities. In Venezuela, there are representatives for ethnic minorities.

5. In terms of powers, there are no clear correlations between the powers vested in the second chamber and the method by which the members are returned. For example, Senate members in Canada are returned by appointment, but their powers are greater than those of the House of Councillors in Japan who are returned by direct elections. Although greater or ultimate powers are vested in the first chamber in quite a number of countries, it is not uncommon to find first chambers which are not vested with final powers. For example, in the Netherlands, Brazil, and Mexico, it is the second chamber or the chamber responsible for reviewing legislation which is vested with final powers. In the US, Canada, Norway, and Switzerland, differences between the two chambers are resolved by a joint committee.

6. The composition, powers and the mechanism for resolving the differences between the two chambers in the above seven countries are described in the following paragraphs.

The United States

Composition of the Congress

7. The US Congress comprises the House of Representatives and the Senate. The House of Representatives has 435 representatives, elected biennially under a "single-seat single-vote" system. The Senate has 100 representatives, two from each State, all directly elected through universal suffrage and serve for a six year term. Elections for the office of Senators are held every two years at the same time with the elections of the House, when the term of office of a third of the Senators expires.

Powers of the Senate

8. Unlike the bicameral legislatures of other countries, the US Senate has substantive legislative power and has the same status as that of the House of Representatives.

9. In the US, the legislative power is jointly exercised by the two Houses. The power to introduce bills is vested in the members in both Houses of the Congress. Motions may be proposed by a senator or a representative in their respective Houses. Government officials (including the President) have no power to introduce bills or motions. Bills prepared by executive departments can only be introduced through a member of the Congress.

10. The US Constitution provides that a bill passed by one House must be sent to the other House for approval in identical text. Hence any of the Houses has an absolute power to veto a bill passed by the other House. Although the President can veto a bill passed by both the Senate and the House of Representatives, his objection will be overturned if the bill is approved by a two-thirds majority in the Senate and the House of Representatives respectively.

11. Although the two Houses of the Congress have about the same status, their powers are slightly different. The House of Representatives has priority in introducing bills for raising revenue, while the Senate has the power to ratify treaties concluded by the President with other countries and to approve nomination of senior officials by the President. In cases of impeachment, the process is to be initiated by the House of Representatives and hearings are to be conducted by the Senate.

Resolution of differences between the two Houses

12. Disputes, if any, on texts of a bill passed by the two Houses of the Congress, or differences in views held by the two Houses, must be resolved by consultation. Generally speaking, if the bill is not controversial, the two Houses may reconcile their differences by making amendments to their texts until a consensus on a common text is reached. If the bill is controversial, or when the difference in views are substantive, a conference committee comprising an equal number of members from the two Houses will be formed to work out a compromise for approval by both Houses. However, if both Houses maintain their own view and refuse to reconcile, a deadlock will result. The bill will then be annulled for being unable to be passed by the two Houses.

United Kingdom

Composition of the Parliament

13. The UK Parliament consists of the House of Commons and the House of Lords. There are 646 members in the House of Commons, who are returned through direct elections by eligible voters under a “single-member constituency, single-vote” system. The Leader of the party winning the majority of seats in the House of Commons will be appointed Prime Minister and will form the government.

14. Before the enactment of the House of Lords Act 1999, members of the upper house were not returned by elections. They were hereditary peers, life peers appointed by the Queen for outstanding public service, and bishops. To take forward a comprehensive reform of the House of Lords, the House of Lords Act 1999 was enacted. The Act provides that hereditary peers shall no longer become members of the House of Lords automatically. In the course of the Bill proceedings, an amendment was passed which provided that 92 hereditary peers could retain their seats in the House of Lords for the time being. However, the Labour Party Government has all along stressed that there will be further reforms to the House of Lords¹. Among these 92 hereditary peers, 75 are elected by hereditary peers from among themselves, another 15 are elected by the whole House. The remaining two seats are held by the Lord Great Chamberlain, who represents the Queen, and the Earl

¹ The Labour Government has proposed to reform the House of Lords to have seats returned through direct election and to have the hereditary seats abolished. The proposal is still under consideration and has yet to be decided.

Marshall, who is responsible for ceremonial functions. The seats for the Archbishops, bishops and the other life peers remain unchanged. Furthermore, the House of Lords Appointments Commission has been set up by the Government in May 2000, and has since been responsible for nominating some life peers to the House of Lords as well as for vetting all other nominations² for peerage in the House of Lords. As of November 2005, there are 733 members in the House of Lords, comprising 616 life peers, 92 hereditary peers, and 25 Archbishops and Bishops.

Powers of the House of Lords

15. The House of Lords has functions on legislation, policy debate and questioning the Executive similar to those of the House of Commons. All bills have to go through both Houses before becoming Acts. A bill may be introduced in either House, and members of either House have the power to introduce bills. However, the actual powers of the House of Lords are restricted under the Parliament Act. These restrictions include :

- (1) The House of Lords only has the “power to delay” but not the “power to veto”. In other words, when a bill has been passed by the House of Commons, the House of Lords can only delay it, but not stop it from passing into law. The House of Lords may delay the enactment of a bill by about one year. Upon the expiry of the period, the House of Commons may re-introduce the bill, pass it for a second time in the next legislative session and then present it direct for Royal Assent.
- (2) The House of Lords cannot introduce bills dealing with taxation or finance. These bills can only be introduced by the House of Commons. Besides, the House of Lords cannot amend or reject bills to raise taxation that have been passed by the House of Commons. These bills will become laws within one month after they are submitted to the House of Lords with or without the consent of the latter.

² Apart from the Appointments Commission, the Prime Minister has the power to recommend members of political parties or from the community to be life peers of the House of Lords.

Resolution of differences between the two Houses

16. There are no special mechanisms or committees for resolving differences between the two Houses of the UK Parliament. Where the two Houses hold different views on a bill, the House of Lords may use its “power to delay” to achieve the purpose of amending or rejecting the bill. By delaying a bill, the House of Lord can have a thorough debate on the bill and put forward amendments to it. If the views of the House of Lords are not accepted by the House of Commons, the House of Lords may continue to use its delaying power to exert pressure on the House of Commons to make amendments. In practice, most of the proposals of the House of Lords are accepted by the House of Commons and the Government. Since 1949, there have only been four occasions when bills were enacted into laws without the consent of the House of Lords.

France

Composition of the Parliament

17. The French Parliament is composed of the National Assembly and the Senate. The National Assembly comprises 577 representatives returned through direct elections through a “single-seat single-vote” system. The constituencies are delineated on the basis of proportion to population. The party winning the majority of seats in the National Assembly will form the government.

18. The Senate currently has a total of 331 seats, of which 304 are for Metropolitan France, 15 for overseas provinces, departments and territories, and 12 for French nationals abroad. In accordance with a law passed in 2003, the number of Senators will gradually increase to 346 in 2010. Senators serve a six-year term. Elections are held every 3 years to return half of them. Senators are returned by an electoral college through indirect elections. The electoral college, with provinces and municipalities as units, comprises members of the National Assembly, representatives of the provincial and municipal councils, and representative of local councils. Seats are allocated on the basis of the population of the respective provinces and municipalities. Two electoral methods are adopted: for those provinces and municipalities having four seats or less in the Senate, a “simple majority system” is adopted; for those provinces and municipalities having five seats or more, a “proportional representation” system is adopted.

Powers of the Senate

19. Under the French Constitution, the functions of the Senate is similar to that of the National Assembly, but the power of the former is relatively smaller than those of the latter. This is mainly reflected in the fact that the Senate cannot veto a bill already passed by a fourth reading in the National Assembly, and that the Senate can only move non-binding motions of no confidence against the government.

20. Senators, as well as the government and members of the National Assembly, have the power to introduce a bill. However, a bill originated by a member of either Chambers must be examined by a committee appointed by the presidium of the respective Chamber in respect of its "financial viability", i.e. on whether there is any conflict with the state budget. If a bill is ruled inadmissible, it cannot be introduced. In practice, there are not many bills so rejected. Even if a bill does have problems, the committee may propose amendments to help it pass the examination.

21. Government bills may be introduced in either of the two chambers. Since the structure and procedures of the two chambers are about the same, the normal practice is to consider the number of bills being dealt with by the two chambers so as to ensure a reasonable share of work load between them.

22. Under the French Constitution, all bills must be examined successively by the two chambers with a view to the adoption of an identical text, thus establishing the "shuttle examination system". A bill examined and first read by one chamber will be passed on to the other chamber for its first reading. If the other chamber completely agrees and endorses the bill without amendments, the bill will be submitted to the President for his signature and then put into effect. If the other chamber proposes amendments, the amended bill will be returned to the first chamber for its second reading in respect of the proposed amendments. If endorsed by the first chamber in its second reading, the amended bill will be passed to the other chamber again for its second reading. If agreement cannot be reached on the bill after two shuttle examinations in the two chambers respectively, the Prime Minister may propose convening a joint committee to resolve and handle the disputes between the two chambers (see paragraphs 24 - 25).

23. In France, the power to draw up and decide a finance bill is vested in the government. None of the two chambers have veto power over a finance bill; they can only make certain amendments i.e. no amendments may be made with the effect of increasing expenditures or reducing the revenues of the state. If the National Assembly is not able to endorse a finance bill within the 40 days after its tabling by the government, the government may request the Senate to make a decision within 15 days. If the Senate and the National Assembly cannot reach a consensus on a bill, the government may convene a joint committee of the chambers to draft a version for endorsement by the two chambers. If the two chambers are not able to make a decision within 70 days, the government may, by ordinance, bring the bill into force.

Resolution of differences between the two Chambers

24. If a joint committee is convened by the Prime Minister, each chamber may send an equal number of members to sit on the committee with a view to find a mutually acceptable text. The bill passed by the committee will be submitted to the two chambers for a third reading and voting. At this stage, no further amendment shall be proposed except from the government or with the consent of the government.

25. If the committee fails to reach a compromise, the National Assembly may still proceed with the third reading. If a bill fails to pass the third reading in both chambers, the Government may ask for a fourth reading and approval by the National Assembly; a final endorsement from the Senate is not required .

Germany

Composition of the Parliament

26. The German Basic Law (Constitution) provides for a bicameral legislature, consisting of the Bundestag and the Bundesrat.

27. All members of the Bundestag are returned by universal suffrage. Half the seats are elected under a "single-seat single-vote" system and the other half under a proportional representation system. Each elector has two votes. There are 614 seats in the Bundestag after the elections in September 2005, an increase of 11 seats compared with the previous term with 603 seats. The Federal Chancellor, elected by the Bundestag, will form the Government.

28. The Bundesrat comprises representatives of federal state governments. Each state has 3 to 6 votes depending on its population and may nominate the same number of regular representatives. Generally speaking, regular representatives of states usually include the state governor, the state financial minister and the minister responsible for federal matters. Currently there are 69 regular members in the Bundesrat. Representatives from the same state shall vote for the same preference. There is no definite term of office for members of the Bundesrat. The state governments may recall or replace their representatives anytime.

Powers of the Bundesrat

29. The German Bundesrat has greater powers than the UK House of Lords. The role of the Bundesrat is to safeguard the interests of the states through participating in federal legislation and scrutinizing administrative regulations of the Federal Government. Apart from raising questions to the Federal Government and listening to Government reports, the Bundesrat has no other supervisory function or powers over the Federal Government.

30. Under the Basic Law, the Federal Government and members of the Bundestag and Bundesrat all have the right to introduce a bill. However, the Bundesrat may not bring up bills relating to finance.

31. The legislative power of the Bundesrat is related to the nature of the bills. Amendments to the Constitution, bills relating to finances and taxation, and bills relating to the rights and interests of the States shall take effect only after passing the Bundesrat. Therefore, the Bundesrat practically has the power to veto such bills. As to other types of bills, while the Bundesrat may reject bills which has been passed by the Bundestag by a two-thirds majority, the Bundestag may reverse such a decision of the Bundesrat by the same majority. There are frequent dispute between two Houses of the German Parliament on classification of bills, and they often have to resort to the Federal Supreme Court for adjudication.

32. In addition, major administrative regulations and orders promulgated by the Federal Government have to be approved by the Bundesrat to take effect as these regulations and orders are mainly enforced by state governments.

33. According to the Basic Law, draft legislation proposed by the Federal Government shall be introduced to the Bundesrat for its initial deliberation. The Bundesrat is to conclude the deliberation and submit its reports and proposed amendments within 6 weeks (3 weeks for urgent bills). The Federal Government will then introduce the draft legislation to the Bundestag, together with the resolutions of the Bundesrat and the explanations by the Government, for its deliberation. In the course of the Bundestag's deliberation, Bundesrat representatives shall attend the relevant committee and plenary meetings. At the committee stage, Bundesrat representatives may speak and propose or move amendments, but they have no right to vote. After a bill is read three times and passed by the Bundestag, it will be passed back to the Bundesrat for its second deliberation, which is to be concluded within 3 months.

Resolution of differences between the two Houses

34. In the event that the Bundesrat does not agree to a bill passed by the Bundestag, the former may request to convene a committee for joint consideration of bills to eliminate or resolve the differences between them concerning the bill. The committee shall comprise 16 Bundestag members and 16 Bundesrat members (one representative from each state). When sitting on the committee, the Bundesrat members are not bound by the instructions of their respective state governments.

35. The meetings of the committee are held in private. The meeting minutes will remain unpublished for at least 5 years so as to free the participating members from the pressure imposed by their respective state governments and political parties, and protect those who have changed their stance. Results of the meetings will be announced in the form of "joint proposals". There are three kinds of proposals :

- (1) to propose the nullification of a bill already passed by the Bundestag or to propose specific amendments. Under such circumstances, the Bundestag will have to deliberate on the bill anew;
- (2) to propose that the Bundesrat should confirm a bill already passed by the Bundestag; and
- (3) in the absence of a consensus, the Bundesrat is to decide whether to veto the bill concerned.

Japan

Formation of the Diet

36. The Diet is composed of the House of Representatives and the House of Councillors. Both are returned by universal suffrage. The House of Representatives is composed of 480 elected members, of which 300 are elected through a “single-seat single-vote” system, while the remaining 180 through a “proportional representation” system in 11 geographical constituencies in the country. The term of office of Members shall be four years. However, if the Prime Minister decides to dissolve the House of Representatives to hold a general election, the term of office will expire upon the dissolution of the House.

37. The House of Councillors has 242 members, of which 146 are returned from the national constituency through a proportional representation system, while the remaining 96 members are returned from 47 prefectures through a “multi-seat single-vote” system. The term of office of the Diet is 6 years. Half of the members are re-elected every 3 years. In the election of both Houses, each elector may cast two votes respectively: one for the nation-wide constituency; another for their respective constituency.

Powers of the House of Councillors

38. Although both the House of Councillors and the House of Representatives are returned by elections, the power and status of the former is lesser than the latter.

39. According to the Constitution, bills must be passed by both Houses. The Diet Law stipulates that the power to introduce bills is vested in the government and Diet members. However, if a motion is introduced by a member, it needs to be supported by 20 members from the House of Representatives and 10 from the House of Councillors. If the bill is related to budgets, it must be supported by 50 members from the House of Representatives and 20 from the House of Councillors. Government bills can be submitted first to any of the Houses, but Article 60 of the Constitution stipulates that budget bills must first be submitted to the House of Representatives. As a usual practice, all major bills must first be submitted to the House of Representatives for its deliberation.

40. The Constitution does not provide the House of Councillors the power to veto a bill passed by the House of Representatives. A bill vetoed by the House of Councillors will become a law if it is passed again by a two-thirds majority of the members present in the House of Representatives. On the contrary, a bill passed by the House of Councillors will be annulled if it is vetoed by the House of Representatives later. In addition, a bill passed by the House of Representatives is considered passed if the House of Councillors fails to take final action within 60 days of receipt of the bill. As for budgets, ratification of treaties, nomination of the Prime Minister and the vote of confidence on the cabinet, resolutions by the House of Representatives overrule those of the House of Councillors.

41. Should emergencies arise after the dissolution of the House of Representatives, according to the Constitution, the cabinet can request the House of Councillors to convene an urgent meeting and temporarily exercise the full power of the Diet. However, the resolutions by the House of Councillors will become null and void unless they are approved by the House of Representatives with a period of ten days after the opening of the next session of the Diet.

Reconciliation of Differences between the Two Houses

42. As a rule, if the two Houses cannot reach a consensus on a bill, a conference committee of both Houses will be formed between them to work out a compromise.

43. The conference committee of both Houses is composed of 20 members (ten from each House). Two chairmen, one from each House, are elected by the respective committee members from his or her own House. The two chairmen preside over the meetings alternately. The House of Councillors cannot reject a request by the House of Representatives to convene a meeting, but not the other way round. For budgets, ratification of treaties, nomination of the Prime Minister and other major issues, if no resolution is reached by the House of Councillors within a specified timeframe, the conference committee must convene a meeting. If a compromise package is reached by the joint committee, no further amendments may be raised by either House. If the conference committee cannot reach an agreement, the chairmen shall make a report to their respective Houses.

Australia

Composition of the Australian Parliament

44. The Parliament in Australia adopts the parliamentary model of the UK, but also makes reference to the US Congress in terms of organization and operation.

45. The Commonwealth Parliament of Australia consists of the British Crown, the House of Representatives and the Senate. Members of both Houses are returned by direct elections. The Senate comprises 76 Senators elected under a “proportional representation system”. This system ensures that the results of the elections reflect the preferences of the electorate, and that candidates of smaller parties have a greater opportunity to be elected. Under the Australian Constitution, 12 Senators are elected from each State, two from the Australian Capital Territory, and two from the Northern Territory.

46. Under the Australian Constitution, the number of members of the House of Representatives must be based on the population of each state and should be, as far as practicable, more than twice the total number of the Senators from the state. The House of Representatives must have at least five members from each state, two from the Australian Capital Territory, and two from the Northern Territory. At present, the House of Representatives has 150 members elected under a “preferential voting system”. The leader of the majority party in the House of Representatives becomes the Prime Minister and forms the Cabinet.

Powers of the Senate

47. The Australian Senate has greater power than the House of Lords in the UK, but less than that of the US Senate. Under the Australian Constitution, all bills must be passed by both Houses. Senators have the power to introduce bills. However, apart from fines, license fees and service charges, Senators cannot introduce motions relating to finances or taxation. Nor can they amend any proposed legislation that will increase the burdens on the people. For motions relating to finance introduced by the House of Representatives, the Senate has no power to amend them on its own. It can only put forward to the House of Representatives a proposal or request for amendments. However, if the House of Representatives declines to make amendments, the Senate can exercise its power to refuse the third reading of the bill for it to become law.

Resolution of Differences between the Two Houses

48. Australia adopts an approach entirely different from other countries in resolving disputes between the two Houses. Under the Constitution, if the Senate refuses twice to pass the same bill which has been passed by the House of Representatives, the Governor-General must dissolve both House at the same time and hold a general election. If an agreement still cannot be reached by the two Houses newly-elected, the Governor-General shall convene a joint sitting. Members present at the joint sitting shall deliberate and then vote on the bill. Any motion or amendments will be passed only when it is affirmed by an absolute majority. Since the establishment of the Constitutional Government in Australia, there were six occasions on which both Houses were dissolved simultaneously in accordance with relevant provisions in the Constitution. However, it was only in 1974 that a joint sitting of both Houses had to be held to make a resolution by voting together.³

Canada

Composition of Parliament

49. The Parliament of Canada is basically modelled after that of the UK. Under the Constitution Act (also known as the “British North America Act”), the Canadian Parliament comprises the British Crown, the House of Commons and the Senate.

50. All members of the House of Commons are elected under a “single-seat single-vote” system, with constituencies delineated on the basis of population. There are currently 308 seats in the House of Commons. The leader of the majority party in the House of Commons assumes office as Prime Minister. As for members of the Senate, the method of selection is different from those of the Upper Houses of other western countries. They are not returned by elections, but are appointed by the Governor General at the recommendation of the Prime Minister. The number of senators may vary as recommended by the Prime Minister, subject to a maximum of 112. There are currently 105 members in the Senate.

³ The bill passed by both Houses at the joint sitting in 1974 were finally rejected by the Supreme Court for not complying with certain provisions in the Constitution and was therefore declared void.

Powers of the Senate

51. Although the Canadian Parliament has an establishment derived from that of the UK, the powers of its Senate are not the same as those of the UK House of Lords. Under the Constitution Act, the two Houses of the Canadian Parliament have the same legislative powers. All bills must be passed by both Houses. Either House may overturn the other's rejection or amendment of a bill. A government bill may be introduced in either House. Both Senators and members of the House of Commons may introduce a bill. However, Senators may not introduce bills relating to finance. The Senate may only amend such bills, but not increase any expenditure.

Resolution of differences between the two Houses

52. When the Senate proposes an amendment to a bill, the House of Commons is obliged to consider them. In the event that the differences between the two Houses persist, a mutually acceptable solution shall be sought by consultation. In practice, however, the Canadian Senate seldom exercises its powers of veto or amendment.

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