

**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<sup>Note 1</sup>.

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:

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<sup>Note 1</sup> 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”,<sup>Note 2</sup>. 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.

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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  
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## **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 Lords<sup>1</sup>. 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

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<sup>1</sup> 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 nominations<sup>2</sup> 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.

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<sup>2</sup> 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.<sup>3</sup>

## **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.

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<sup>3</sup> 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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