

INFORMATION NOTE

Executive Accountability System in the United Kingdom, Germany, France and Hong Kong

1. Background

1.1 A delegation of the Panel on Constitutional Affairs will visit London, Edinburgh, Berlin and Paris to study the executive accountability system in the United Kingdom (UK), Germany and France. This information note provides some basic information on the executive accountability system in these three countries and Hong Kong.

1.2 Specifically, we provide, as requested by the Panel Chairman, information on:

- a) political system of the UK, Germany and France;
- b) background information on the UK, Germany and French Parliaments;
- c) background information on the devolution of the Scottish Parliament;
- d) provisions in the Hong Kong Basic Law relating to the accountability of the Executive to the Legislature.

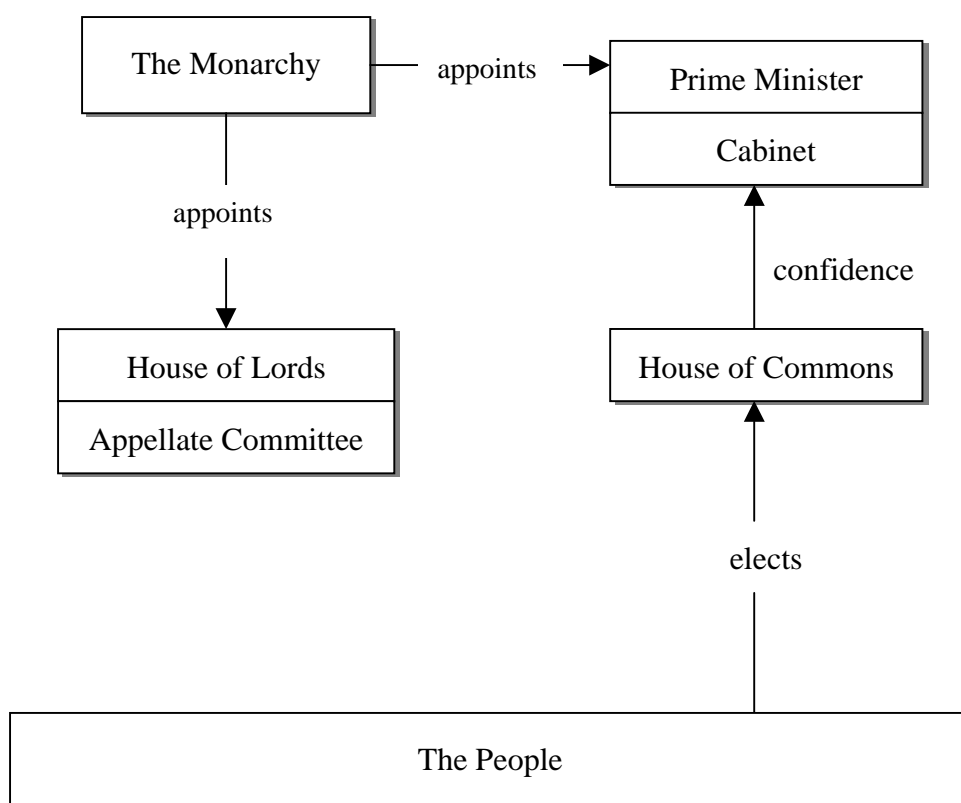
1.3 For more detailed information on political system of the UK, Germany and France, please refer to our previous three research reports: RP06/99-00, RP05/99-00 and RP08/99-00. Most of the information in these three reports is still valid, and new development since April 2000 is included in this information note.

2. The United Kingdom

2.1 The United Kingdom is a unitary state with a population of 59.5 million in 1999. It is a parliamentary system of government, has a bicameral legislature (the House of Commons and the House of Lords) and a judiciary, which includes the House of Lords as the highest court of appeal. The Head of State (i.e., the Monarch) is separated from the Head of Government (i.e., the Prime Minister), and the former performs largely ceremonial functions. The Prime Minister leads a cabinet consisting of members of the legislature. Figure 1 depicts the relationship of the major political institutions in the United Kingdom

2.2 The United Kingdom does not have a constitution set out in any single document. Instead, its constitution is made up of statute law, common law, and conventions.

Figure 1 - Political Institutions of the United Kingdom



The Executive

The Monarchy

2.3 The Head of State of the United Kingdom is the Monarch. In law, the Monarch (now Queen Elizabeth II) is head of the executive, an integral part of the legislature, head of the judiciary, and the commander-in-chief of all armed forces of the Crown. In reality, the Queen acts on the advice of her government ministers.

Prime Minister

2.4 The Prime Minister, who is appointed by the Queen, is Head of the Government. By convention, the Prime Minister is always a member of House of Commons. The Prime Minister's unique position of authority derives from majority support in the House of Commons and from the power to appoint and dismiss ministers.

2.5 The Prime Minister presides over the Cabinet, and is responsible for allocating functions among ministers.

Cabinet

2.6 The Cabinet is composed of about 20 ministers chosen by the Prime Minister and may include both departmental and non-departmental ministers. Cabinet Committees are created to assist the Cabinet in its work. Members of these Cabinet Committees include Cabinet ministers and non-Cabinet ministers such as junior ministers and civil servants. These Cabinet Committees derive their authority from the Cabinet and their decisions have the same formal status as decisions by the full Cabinet. The membership and terms of reference of all ministerial Cabinet Committees are published.

The Parliament

2.7 The Sovereign, the House of Lords and the House of Commons are the three elements which made up Parliament.

The House of Commons

2.8 The House of Commons currently has 659 Members of Parliament, each representing an individual constituency. Of the 659 seats, 529 are for England, 40 for Wales, 72 for Scotland and 18 for Northern Ireland. The House of Commons is elected by universal adult suffrage. General Elections are held after a Parliament has been dissolved and a new one summoned by the Sovereign. A political party that wins the majority of Commons seats in a general election is called on to form the next government.

2.9 The main functions of the House of Commons are to:

- examine proposals for new laws
- provide, by voting for taxation, the means of carrying on the work of Government
- scrutinise Government policy and administration, including proposals for expenditure
- debate the major issues of the day.

2.10 The House scrutinises the work of the Government through various means, including questioning ministers in the Chamber and through the Select Committee system.

2.11 Parliamentary control of the Government is ultimately exercised by the ability of the House of Commons to force the Government to resign. In the UK, there used to be a convention that a Government was obliged to resign or seek a dissolution following a defeat on an important issue in the House of Commons. However, the current practice appears to require a Government to resign or seek a dissolution following a defeat on a confidence motion.

The House of Lords

2.12 The British Government has begun a step-by-step reform of the House of Lords aimed at making the second chamber more representative of British society. Following the House of Lords Act 1999 only 92 (out of over 750) hereditary peers remain in the House.

2.13 Members of the House of Lords are not elected and consist of Lords Spiritual and Lords Temporal. The Lords Spiritual are the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and the 21 next most senior diocesan bishops of the Church of England. The present Lords Temporal consists of :

- 92 hereditary peers, who were selected by ballot from among the membership of the former House of Lords;
- life peers created to assist the House in its judicial duties (Law Lords);
- all other life peers.

2.14 There is no upper limit on the total number of members. As of April 2001, the House of Lords consists of 561 life peers, 92 hereditary peers and 26 bishops.

2.15 The Lord Chancellor is the Speaker of the House. The House of Lords plays an important part in revising legislation and keeping a check on Government by scrutinising its activities. The House, through its Appellate Committee, has a judicial role as the final Court of Appeal for the whole of the UK in civil cases and for England, Wales and Northern Ireland in criminal cases.

2.16 The present House of Lords is only a transitional one. In January 2000 the Royal Commission on the Reform of the House of Lords published its report *A House for the Future*. The report recommended a reformed house of around 550 people with:

- a significant minority of regional members;
- representatives drawn from all sectors of society;
- a statutory minimum proportion of women and of men;
- fair representation for members of ethnic minority groups; and
- a broader range of religious representation.

Devolution --- the Scottish Parliament

2.17 Scotland was made part of the UK by means of a treaty signed between two independent states in 1706. In the 1970s there had been discussion on the principles with regard to devolution in the UK. In November 1975, the British Government published a White Paper, *Our Changing Democracy: Devolution to Scotland and Wales*, turning the general principles of devolution into detailed proposals.

2.18 A referendum on proposals to establish a Scottish Assembly was held in March 1979, but the proportion of the total electorate voting in favour of the Assembly was below the required level of 40 per cent.

2.19 In 1993, the British Government issued a White Paper, *Scotland in the Union: A Partnership for Good*, following a wide-ranging examination of Scotland's place in Britain and the role of Parliament in Scottish affairs. This has led to a number of changes, for example, the range of business handled by the Scottish Grand Committee in the Commons was widened.

2.20 In July 1997, a White Paper, *Scotland's Parliament*, outlining the new Labour Government's devolution proposals was issued. Legislation was passed in July 1997 to allow the people of Scotland to vote in a referendum on a proposal to devolve power from Parliament at Westminster to a Scottish Parliament. The referendum, which was held in September 1997, endorsed the establishment of a Scottish Parliament and supported the tax-raising powers of the Parliament. *The Scotland Act 1998* provided for the establishment of the Scottish Parliament and Executive.

2.21 The first Scottish Parliamentary election was held in May 1999, 129 Members of the Scottish Parliament (MSPs) were elected for a fixed four-year term. There are 73 MSPs for single-member constituencies and 56 MSPs representing eight regions, each with seven members. MSPs are elected by a method of proportional representation known as the 'additional member system'. Each voter has two votes, one vote for a constituency MSP and one regional vote for a registered political party or an individual independent candidate.

2.22 The Scottish Parliament's responsibilities include health; education and training; local government; housing; economic development; home affairs and many aspects of civil and criminal law; transport; the environment; agriculture, fisheries and forestry; and sport and the arts. In these areas, the Scottish Parliament is able to amend or repeal existing Acts of Parliament and to pass new legislation.

2.23 The Scottish Executive is headed by a First Minister, normally the leader of the party able to command majority support in the Parliament. The Scottish Executive has responsibility for all public bodies whose functions and services have been devolved and is accountable to the Parliament for them.

2.24 Responsibility for overseas affairs, defence and national security, overall economic and monetary policy, employment legislation and social security remains with the UK Government and Parliament. The position of Secretary of State for Scotland continues, with the responsibility of representing Scottish interests within the UK Government.

2.25 The Scottish Parliament had a budget of £16.9 billion in 2000-01, which is allocated by the UK Parliament. Once the amount of the budget has been determined, the Scottish Parliament is free to allocate resources across the expenditure programmes.

2.26 The Scottish Parliament has the power to increase or decrease the basic rate of income tax - 22 pence in the pound - by a maximum of 3 pence. The Parliament is responsible for determining the form of local taxation and, if it wishes, is able to alter both the council tax and business rates.

Ministerial Responsibility

2.27 One of the major constitutional conventions in the UK is that ministers are accountable to Parliament, and through Parliament to the public. Ministerial responsibility in the UK refers both to ministers' collective responsibility for government policy and ministers' individual responsibility for their own department's work.

2.28 The doctrine of collective responsibility means that all ministers are expected to support government policy once it has been settled. Individual responsibility means that ministers have a duty to be accountable for the policies, decisions and actions of their departments and agencies.

2.29 On 19 March, 1997, the House of Commons passed a Resolution on 'Minister Accountability to Parliament'. A similar Resolution was passed by the House of Lords on 20 March, 1997. Later, the UK Government formally incorporated the text of the Resolution into a new *Ministerial Code (1997)*.

2.30 Under the new *Ministerial Code*, ministers are expected:

"...to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. In particular, they must observe the following principles of Ministerial conduct:

- i. Ministers must uphold the principle of collective responsibility;*
- ii. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Departments and Next Steps Agencies;*
- iii. It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;*
- iv. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's Code of Practice and Access to Government Information (Second Edition, January 1997);*

- v. *Similarly, Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code (January 1996)."*

(Source: <http://www.cabinet-office.gov.uk/central/1997/mcode/index.htm>)

2.31 The relationship between the Scottish Parliament and the Executive is still evolving. On the one hand, it maintains many fundamental features of the 'Westminster model'. On the other hand, since the Scottish Parliament is established by the *Scotland Act 1998*, the Act can be regarded as the formalisation of recognized UK parliamentary conventions and practices. *The Scotland Act 1998* provides for a formal involvement of the Scottish Parliament in ministerial appointments and in their remuneration.

2.32 In November 2000, the Scottish Parliament passed a motion on executive accountability to parliament. The resolution is as follows:

"That the Parliament notes that the Executive is committed to a policy of openness, accessibility and accountability in all its dealings with the Parliament and its Committees; further notes both the Parliament's right and duty to hold the Executive to account including the power to invoke section 23 of the Scotland Act and the public interest in maintaining the confidentiality of exchanges between officials and Ministers concerning policy advice; observes that other Parliaments with strong freedom of information regimes do not disclose the terms of such exchanges; calls, to that end, for the Executive and the Parliament to observe the following principles:

(i) consistent with its policy of openness, the Executive should always seek to make as much information as possible publicly available as a matter of course and should respond positively to requests for information from the Parliament and its Committees;

(ii) officials are accountable to Ministers and Ministers in turn are accountable to the Parliament and it follows that, while officials can provide Committees with factual information, Committees should look to Ministers to account for the policy decisions they have taken;

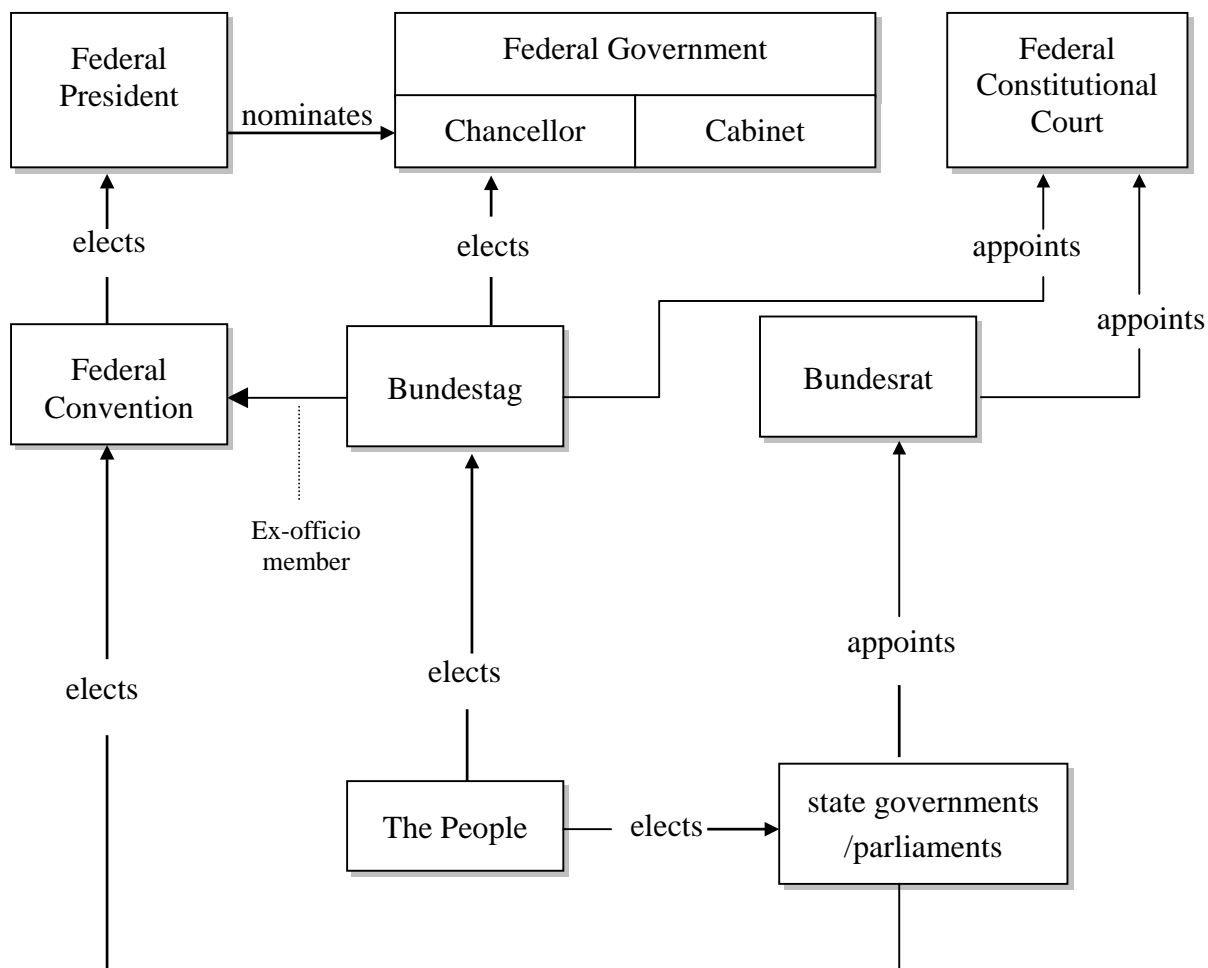
(iii) where, exceptionally, Committees find it necessary to scrutinise exchanges between officials and Ministers on policy issues, arrangements should be made to ensure that the confidentiality of these exchanges is respected, and commends these principles to Committees as guidelines to be followed in their dealings with the Executive."

3. Germany

3.1 Germany is a federal republic with a population of about 82.0 million. It is a parliamentary system of government, has a bicameral legislature (the Bundestag and Bundesrat)¹ and a judiciary, which includes a constitutional court. The Head of State is the Federal President, who is separated from the Head of Government (the Federal Chancellor). The Federal Chancellor, who is elected by the Bundestag, leads a Cabinet consisting of Federal Ministers. (see Figure 2) Neither the Federal Chancellor nor the Federal Ministers are required to be members of the legislature.

3.2 Germany's current Constitution, the Basic Law, was promulgated by the West German Parliamentary Council on 23 May 1949. After the unification of West and East Germany in 1990, the Basic Law became the Constitution of the whole country.

Figure 2 - Political Institutions of the Federal Republic of Germany



¹ The Bundestag is usually referred as the Federal Parliament, while the Bundesrat as the Federal Council.

3.3 The Federal Constitutional Court consists of 16 judges, and is divided into two panels (one dealing with cases involving the basic rights and other with other cases), with eight judges in each. Half of the judges are appointed by the Bundestag and half by Bundesrat. The Court rules on disputes between the Federation and the states or between individual federal institutions. It scrutinizes federal and state laws as to their conformity with the Basic Law. The Courts also acts in cases referred by certain authorities, such as the Federal Government, the state governments, the Bundestag or the lower courts.

The Executive

Federal President

3.4 The Head of State of the Federal Republic of Germany is the Federal President (President). The President is not directly elected. He or she is elected by the Federal Convention, a constitutional body which convenes for this purpose. It consists of members of the Bundestag and an equal number of members elected by state parliaments. The President is elected for a term of five years and he or she may be re-elected once only. The Bundestag or the Bundesrat may impeach the Federal President before the Federal Constitutional Court for wilful violation of the Basic Law or any other federal law

Federal Chancellor

3.5 The Chancellor is chairman of the Cabinet and Head of Government. The Chancellor is not required to be a member of the legislature. The Chancellor is nominated by the President and elected without debate by the Bundestag. The Bundestag may express its lack of confidence in the Chancellor only by electing a successor with a majority vote of its members (known as "constructive vote of confidence"). The President must then appoint the person elected. A mere vote of no-confidence in the Chancellor cannot be moved in the Bundestag. The Federal Government of Germany consists of the Federal Chancellor (Chancellor) and the Federal Ministers (Ministers), who together make up the Cabinet.

3.6 The German chancellorship is a powerful political institution. Article 65 of the Basic Law defines the powers of the Chancellor and Ministers. The Chancellor determines and is responsible for the general policy guidelines. The Chancellor, not the Federal Government, is accountable to the Parliament. Only the Chancellor can propose a vote of confidence (which is different from the constructive vote of confidence mentioned above) and request the dissolution of the Bundestag.

Cabinet

3.7 The Chancellor has the power to name members of the Cabinet and can create or abolish Federal Ministerial Departments. The Chancellor also summons and holds Cabinet meetings. Cabinet Ministers are appointed and dismissed by the President upon the proposal of the Chancellor. Ministers are not required to be members of the legislature. However, Ministers are usually members of the Bundestag.

The Legislature

3.8 Germany has a bicameral legislature: the two houses are the Bundestag and Bundesrat.

Bundestag

3.9 The Bundestag is the parliamentary assembly of freely elected representatives of the people. The Bundestag consists of at least 656 members, half of whom are elected in the constituencies. The other half are elected by proportional representation from lists of candidates drawn up by the political parties in each federal state. In the current (14th) term (1998-2002), the Bundestag has 669 members.

3.10 The Bundestag has the primary functions of law-making, the election of the Chancellor, the control of the Federal Government, the appointment of half of the membership of the Federal Constitutional Court, and special responsibilities for supervision of the bureaucracy and military.

3.11 In Germany, there is a division of legislative powers between the federal and state governments. Areas for exclusive federal legislation include foreign affairs and national citizenship. In some policy areas, framework laws are passed at the federal level, the main principles of which the state authorities must then incorporate into their legislation in similar policy areas. These include principles in areas of higher education, press and film industry, and land distribution. In some policy areas, the legislative powers of the federal and state levels are concurrent. The states may legislate in areas where the Federal Government has not already done so. They include areas such as civil and criminal law and sentencing, registration of births, deaths and marriages, and the law of association and assembly.

3.12 The Bundestag also has the power to initiate and carry out the impeachment of the President. As mentioned above, the Bundestag may only remove a Chancellor from his or her office by passing a constructive vote of confidence.

3.13 The Bundestag uses a variety of means to monitor the executive, which include setting up permanent committees, appointment of investigative committees, debates, and raising of questions.

3.14 The Federal President may dissolve the Bunderstag under two conditions

- (1) if none of the candidates nominated for the office of Chancellor has secured a majority of the votes of the members of the Bundestag after three ballots, the President can either appoint a candidate who obtained most of the votes cast or dissolve the Bundestag within seven days of the third ballot.
- (2) if a motion of the Chancellor for a vote of confidence does not obtain the support by the majority of members of the Bundestag, the President may, upon the proposal of the Chancellor, dissolve the Bundestag within 21 days.

Bundesrat

3.15 The Bundesrat is the institution through which the governments of the 16 states take part in federal legislative and administrative processes. The Bundesrat is composed of members appointed by the state governments. It elects a president every year and makes decision by a majority vote. The members' votes, which must be cast in blocs, are based on the population of each state. Each state has a minimum of three votes and a maximum of six votes.

3.16 The Bundesrat membership usually comprises states' prime ministers, their federal affairs ministers, finance ministers, and other appointed members. Other states' cabinet ministers usually become deputy members of the Bundesrat, and they enjoy equal rights when sitting in for the permanent members.

3.17 Membership in the Bundesrat does not enjoy parliamentary immunity. Simultaneous membership in the Bundesrat and Bundestag is not allowed.

3.18 More than half of all federal bills require the formal approval of the Bundesrat. This applies especially to bills that concern vital interests of the states, for instance their financial affairs or their administrative powers. In other cases, the Bundesrat only has a right of objection, but this can be overruled by the Bundestag

3.19 The Bundesrat also has the power to initiate the impeachment of the President.

3.20 Half of the members the Federal Constitutional Court are appointed by the Bundesrat. The Bundesrat can institute proceedings on questions regarding constitutionality and present its standpoint on proceedings before the Federal Constitutional Court.

Ministerial Responsibility

3.21 Article 65 of the Basic Law provides for the basis of ministerial responsibility in Germany, which stipulates that:

"The Federal Chancellor shall determine and be responsible for general policy guidelines. Within the limits set by these guidelines each Federal Minister shall run his department independently and on his own responsibility. The Federal Government shall settle differences of opinion between Federal Ministers. The Federal Chancellor shall preside over the conduct of Federal Government business in accordance with rules of procedure adopted by it and approved by the Federal President."

3.22 Article 65 explains why the German system of Government is often referred to as a "Chancellor democracy". The Chancellor is the only member of the Government elected by Parliament, and he alone is accountable to it. This accountability is manifested in the provision of a constructive vote of confidence to bring down a Chancellor who loses the support of Parliament.

3.23 The second sentence of Article 65 sets out the "Minister Principle". Under the guidelines of policy laid down by the Chancellor, Federal Ministers conduct and are responsible for the business of their own department. The Chancellor is not allowed to intervene the day to day operation of the departments.

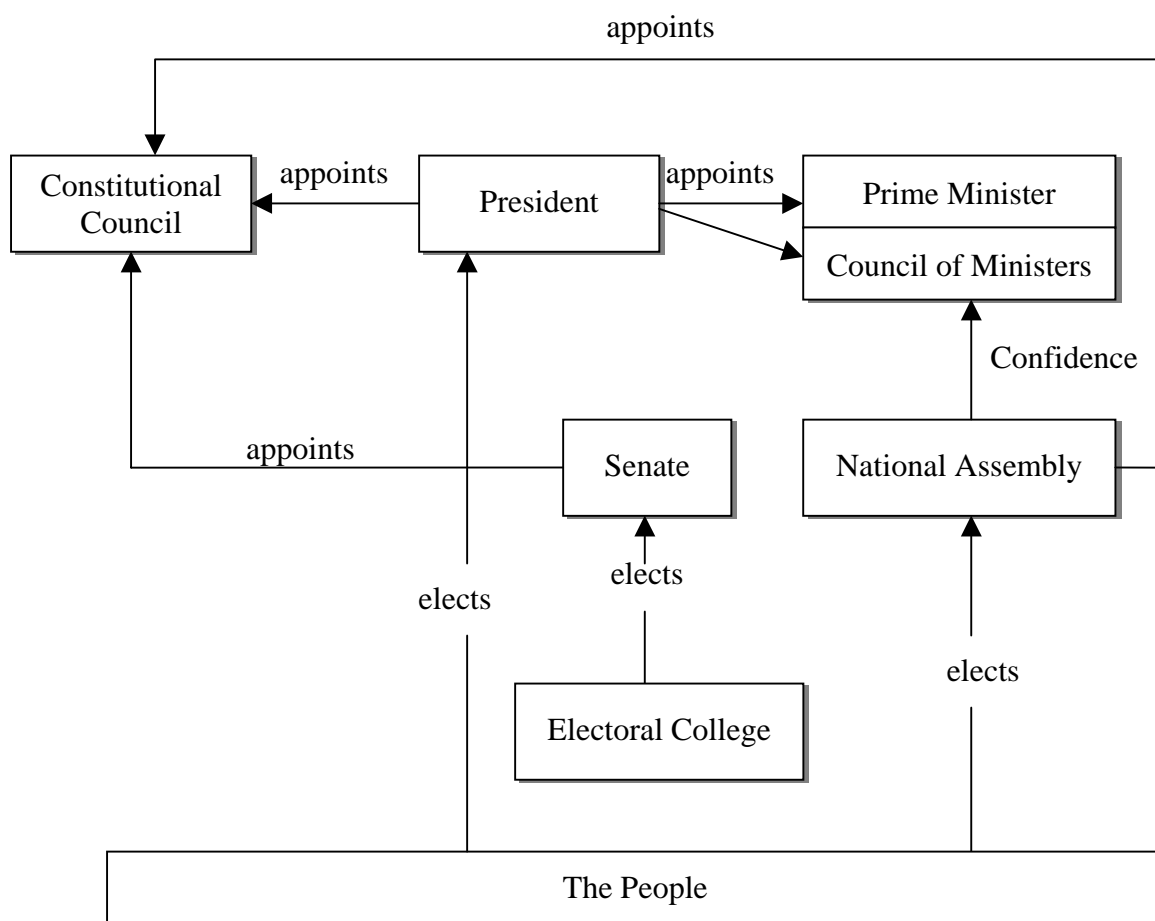
3.24 The notion of collective responsibility is not well developed in Germany. In a formal sense, Federal Ministers are only accountable to the Chancellor. On numerous occasions, they have disagreed publicly with their colleagues. Decisions by individual Ministers do not compel others to resign if they disagree.

3.25 The third sentence of Article 65 lays down the "Cabinet Principle", stating that the Federal Government [Cabinet] decides on differences of opinion between Ministers. Although German Ministers are nearly always members of Parliament, channels for the Cabinet to be accountable to Parliament are limited.

4. France

4.1 France is a unitary state with a population of 58.6 million in 1998. It has a semi-presidential style of parliamentary government, where executive power is shared by the President of the Republic and the Prime Minister. The Government is headed by the Prime Minister which is responsible to a bicameral Parliament, comprising the National Assembly and the Senate. It has a judiciary and a Constitutional Council. (see figure 3)

Figure 3 - Political Institutions of the Republic of France



4.2 The Constitution of the Fifth Republic (the existing constitution) was adopted by referendum on 28 September 1958 and promulgated on 6 October 1958.

4.3 The Constitutional Council consists of nine members, whose term of office is nine years and not renewable. One third of the membership of the Constitutional Council is renewed every three years. Three of its members are appointed by the President of the Republic, three by the president of the National Assembly, and three by the president of the Senate. In addition to these nine members, former Presidents of the Republic shall be members of the Constitutional Council *ex officio* for life. The president of the Constitutional Council is appointed by the President of the Republic. The Council ensures the regularity of election for the President and members of Parliament, examines the constitutionality of bills before promulgation and decides whether certain legislation is within the competence of Parliament or the Government.

The Executive

President

4.4 In France, the Head of State, the President, is elected directly for five years (the President's term was shortened from 7 to 5 years by a referendum held in September 2000). In a presidential race, if no candidate obtains an absolute majority on the first occasion, a second round will be held for the two candidates who obtained the greatest number of votes.

4.5 The President is responsible for the proper functioning of public powers and the continuity of the state. The President is the head of the armed forces and is the guarantor of the independence of the judiciary.

4.6 The President has the power to appoint the Prime Minister and other ministers, and presides over the Council of Ministers (cabinet). Normally, the President's official decisions have to be countersigned by the Prime Minister and appropriate ministers but there are exceptions (such as submitting to a referendum a bill that deals with certain prescribed subject matters).

4.7 The President is not responsible for his official actions, except in the case of high treason, for which he may be indicted by a majority vote of the members of both Chambers of Parliament and tried by the High Court of Justice.

Prime Minister

4.8 In France, the Prime Minister is chosen by the President. The Prime Minister is usually a member of the National Assembly and ought to have the support of the majority of this body.

4.9 The Prime Minister directs the operation of the Government, is responsible for the national defence, ensures the execution of the law, and, except where preempted by the President under the constitution, exercises regulatory and appointment powers.

4.10 The Prime Minister, after deliberation by the Council of Ministers, may take the Government's programme or possibly a statement of its general policy as an issue of its responsibility before the National Assembly.

4.11 The National Assembly may challenge the responsibility of the Government by a motion of censure. Such a motion is admissible only if it is signed by at least one-tenth of the members of the National Assembly. The vote may not take place 48 hours after the motion has been filed. Should a motion of censure be rejected, its signatories may not introduce another motion of censure during the same session.

4.12 The Prime Minister can, after deliberation by the Council of Ministers, engage the Government's responsibility before the National Assembly for the adoption of a bill. In this case, the bill will be considered as adopted unless a motion of censure is filed within twenty-four hours and is carried.

4.13 When the National Assembly adopts a motion of censure, or when it fails to endorse the programme or a statement of general policy of the Government to which the Government has engaged its responsibility, the Prime Minister must tender the resignation of the Government to the President.

Cabinet

4.14 The Council of Ministers is chosen by the President on the advice of the Prime Minister. They can be members of Parliament, but need not be. Ministerial positions are regarded as incompatible with other positions in the government and certain private activities, and if they are members of Parliament, they are replaced by their alternates (each candidate for an Assembly seat runs with an alternate, whose name also appears on the election ballot).

The Parliament

4.15 The two houses of Parliament are called the National Assembly and the Senate.

The National Assembly

4.16 The National Assembly consists of 577 deputies elected for five years. The life of the Assembly may be shortened if it is dissolved by the President of the Republic.

4.17 Deputies are directly elected by universal adult suffrage, each representing an individual constituency. To be elected a deputy, one must obtain an absolute majority of votes (more than half the votes) at the first ballot or a relative majority (the largest number of votes) at the second ballot.

4.18 The National Assembly has two main functions: to adopt statutes and to supervise the Government.

4.19 The President can, after consulting with the Prime Minister and the Presidents of both houses of Parliament, dissolve the National Assembly (unless a dissolution has taken place within the last 12 months).

The Senate

4.20 The Senate consists of 321 members each elected for nine years. Elections take place every three years, and are for one third of the Senate. Senators are elected indirectly by an electoral college. The electoral college is composed of members of the National Assembly, delegates from the Council of the Départments (A *département* is geographically the basic administrative unit in France) and delegates from the Municipal Councils. The Senate has similar power as the Assembly.

Ministerial Responsibility

4.21 According to the French Constitution, the Government is responsible to the Parliament (Article 20). Specifically, the Government is responsible to the legislature in accordance with the provisions relating to the adoption of a motion of censure (see paragraphs 4.11 and 4.12).

4.22 The principle of collective cabinet responsibility, that is, the notion that individual ministers must publicly agree with the general cabinet position on all issues, has generally been adhered to.

5. Hong Kong

5.1 In this section, we provide information on provisions in the Basic Law relating to the accountability of the Executive² to the Legislature.

General Principle:

5.2 The Chief Executive (CE) has dual accountability to the Central Government and the Hong Kong Special Administrative Region (HKSAR).

Article 43:

"The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this law."

5.3 The Government of the HKSAR is accountable to the Legislative Council (LegCo).

Article 64:

"The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure. "
c.f. *"...the executive authorities shall be accountable to the legislature."*
(Joint Declaration, Annex I para. 4)

² The Executive here includes the Chief Executive, the Executive Council and the Government of the Hong Kong Special Administrative Region.

Impeachment of the Chief Executive:

5.4 The Legislative Council may pass a motion for investigation and impeachment of the Chief Executive.

Article 73 (9):

"If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; "

Dissolution of the Legislative Council

5.5 The Chief Executive has the power to dissolve the Legislative Council if a) the CE refuses to sign a bill passed the second time by the LegCo; or b) the LegCo refuses to pass a budget or any other important bill.

Article 49:

"If the Chief Executive of the Hong Kong Special Administrative Region considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all the members, the Chief Executive must sign and promulgate it within one month, or act in accordance with the provisions of Article 50 of this Law."

"If the Chief Executive of the Hong Kong Special Administrative Region refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council."

Article 50:

The Chief Executive must consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office. "

Resignation of the Chief Executive

5.6 The Chief Executive must resign when there are serious disagreements with the LegCo.

Article 52:

"The Chief Executive of the Hong Kong Special Administrative Region must resign under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;*
- (2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and*
- (3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute."*

The Executive Council and the LegCo

5.7 When introducing bills to the LegCo or dissolving the LegCo, the Chief Executive is required to consult the Executive Council.

Article 56:

"Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record."

Legislative Procedure:

5.8 Power to sign bills

The Chief Executive has the power to signs bills passed by the LegCo.

Article 48 (3):

"[the Chief Executive] To sign bills passed by the Legislative Council and to promulgate laws;..."

Article 76:

"A bill passed by the Legislative council of the Hong Kong Special Administrative Region may take effect only after it is signed and promulgated by the Chief Executive."

5.9 Power to give consent to the introduction of Private Member's bills

The Chief Executive has the power to give a consent to the introduction of Private Member's bills relating to government policies.

Article 74:

"Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government polices are introduced."

5.10 Power to approve financial motions

The Chief Executive has the power to approve the introduction of financial motions to the LegCo.

Article 48 (10):

"To approve the introduction of motions regarding revenues or expenditure to the Legislative Council"

Public Inquiry

5.11 The LegCo has the power to summon persons concerned to testify or give evidence.

Article 73 (10):

"To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence"

5.12 The Chief Executive has the power to decide whether relevant government officials should testify or give evidence before the LegCo.

Article 48 (11):

"To decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees"

Financial Control

5.13 The Government of the HKSAR is required to obtain approval from the LegCo for taxation and public expenditure. The LegCo has the powers to examine and approve budgets. The Chief Executive has the power to sign budgets.

Article 64:

"...it [the Government of the HKSAR] shall obtain approval from the Council for taxation and public expenditure."

Article 73 (2) and (3):

"The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions;

.....

- (2) To examine and approve budgets introduced by the government;*
- (3) To approve taxation and public expenditure;"*

Article 48 (3):

"...[the Chief Executive]To sign budgets passed by the Legislative Council and report the budgets and final accounts to the Central People's Government for the record;..."

5.14 The Chief Executive is required to apply to the LegCo for provisional appropriations.

Article 51:

"If the Legislative Council of the Hong Kong Special Administrative Region refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations. If appropriation of public funds cannot be approved because the Legislative Council has already been dissolved, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year."

Policy Address

5.15 The Government of the HKSAR is required to present regular policy addresses to the LegCo. The LegCo has the powers to receive and debate the policy addresses of the Chief Executive.

Article 64:

"...it [the Government of the HKSAR] shall present regular policy addresses to the Council;..."

Article 73 (4):

".....[the LegCo] (4) To receive and debate the policy addresses of the Chief Executive; .."

Question and Debate

5.16 The Government of the HKSAR is required to answer questions raised by members of the LegCo and to designate officials to sit in on the meeting of the LegCo. The LegCo has the power to raise questions on the work of the Government and debate any issue concerning public interests.

Article 64:

"...it [the Government of the HKSAR] shall answer questions raised by members of the Council; .."

Article 62 (6):

" [the Government of the HKSAR](6) To designate officials to sit in on the meetings of the Legislature Council and to speak on behalf of the government."

Article 73 (5) and (6):

"The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions;

.....

- (5) To raise questions on the work of the government;*
- (6) To debate any issue concerning public interests;... "*

Appointment of Judges

5.17 In appointing or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court, the Chief Executive is required to obtain the LegCo's endorsement

Article 90:

"...In the case of the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region, the Chief Executive shall, in addition to following the procedures prescribed in Articles 88 and 89 of this Law, obtain the endorsement of the Legislative Council and report such appointment or removal to the Standing Committee of the National People's Congress for the record."

Voting Mechanism

5.18 The passage of bills introduced by the Government requires at least a simple majority vote of LegCo Members present. The passage of motions, bills or amendments to government bills introduced by LegCo Members requires a simple majority vote in two different groups of Members present.

Annex II, II:

"...The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee."

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22 May 2001
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