

*Systems of Government in Some Foreign Countries:
France*

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EXECUTIVE SUMMARY

1. The Fifth French Republic (France) has a semi-presidential style of parliamentary government characterized by a dual executive: executive power is being shared by the President of the Republic and the Prime Minister.
2. The President is the Head of State and is elected for seven years by direct universal suffrage. His functions and powers include *inter alia* being arbiter of the Constitution, presiding over Cabinet meetings, promulgating laws, calling for referendums, dissolving the Parliament, being Commander of the armed forces, and negotiating and ratifying treaties.
3. The Prime Minister is the Head of Government, who is appointed by the President after a legislative election is held for the National Assembly. His functions and powers include directing the actions of the government, being responsible for national defence, ensuring the execution of the laws, and exercising regulatory and appointment powers. He is to form a Council of Ministers which shall help him to deliberate policies and decisions.
4. The French Parliament is bicameral, consisting of the National Assembly and the Senate. The Parliament makes laws, controls the government budget and oversees government policy. National Assembly Deputies are elected by direct universal suffrage while Senators are indirectly elected by electoral college. Only the National Assembly can compel the government to resign when it produces a motion of censure. No government has been forced to resign by censure in the Fifth Republic.
5. The Executive dominates the Legislature. The Government sets the agenda for the Parliament, and government bills are to take priority over private members' bills. The Government can even submit a bill for passage without seeking parliamentary input on all details. Questions are limited to two afternoons in a week in the National Assembly and one day in a month in the Senate. The Government can promulgate its budget by decree if Parliament does not approve it within 70 days. The Government can declare its policy and provoke the Parliament to accept it unless a censure is successfully produced. A successful censure has never happened in the Fifth Republic because the opposition lacked enough votes.
6. Political parties may be freely established and freely operate under the Constitution. The Electoral Code restricts the amount and sources of donations which can be received by candidates and political parties.
7. Amendments to the Constitution are provided for in the Constitution, which comprise different routes of approval by the Parliament and referendums.
8. Eight referendums have been held since 1958, five of which concerned foreign policy.

SYSTEMS OF GOVERNMENT IN SOME FOREIGN COUNTRIES: FRANCE

PART 1 - INTRODUCTION

1. Background

1.1 In January 2000, the Panel on Constitutional Affairs requested the Research and Library Services (RLS) Division of the Legislative Council (LegCo) Secretariat to conduct a study on systems of government in some foreign countries.

1.2 This report forms part of the series of studies discussing systems of government. There are seven separate research reports (RP03/99-00 to RP09/99-00) on this subject.

2. Scope

2.1 The scope of the research, as agreed by the Panel, covers

- the election or appointment of the Executive;
- the election or appointment of the Legislature;
- the structural and operational, formal and informal inter-relationships between the Executive and the Legislature; and
- other features of political participation, e.g. referendum, constitutional assembly or constitutional convention, political parties, etc.

2.2 This research studies the systems of government of the United States of America (the United States), the United Kingdom, the French Republic (France), the Federal Republic of Germany (Germany), Japan, New Zealand and the Republic of Singapore (Singapore). The United States is chosen because it is a typical form of presidential government. The United Kingdom is chosen because its Executive ministers are all members of the Legislature. France is chosen because its Executive ministers are not allowed to be members of the Legislature. Germany is chosen because it allows but does not require Executive ministers to be members of the Legislature. Japan, New Zealand and Singapore are chosen because their electoral laws have been reformed in recent years.

3. Methodology

3.1 Information in this report is obtained from relevant reference materials and the Internet.

3.2 Unless specified otherwise, all reference to articles in this report is the articles in the French Constitution of 1958 (the Fifth Republic), as amended up to 8 July 1999.

PART 2 - SOME BASIC INFORMATION

4.1 France is a republic 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. There is a judicial branch of government and the legal system is based on Roman law.

4.2 Deserving special mention are two public bodies, the Constitutional Council and the Council of the State. The Constitutional Council is a special court in France which performs three functions: judicial, legislative and electoral. It examines the constitutionality of bills before promulgation and the constitutionality of international obligations accepted by France; it decides whether certain legislation is within the competence of Parliament or the Government; it ensures the regularity of the election of the President of the Republic and of members of Parliament; and it is consulted before the President of the Republic declares a state of emergency.

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.

4.4 The Council of the State is an independent administrative tribunal established since the 1800s to resolve disputes between individual citizens and the administration of the bureaucracy. The President of the Republic is the president of this Council. A commission was established in 1990 under this Council to oversee the finances and operations of political parties.

4.5 There have been five republics in France since the Revolution of 1789. The current republic is the Fifth Republic, which was founded in 1958. A brief history is summarized in Appendix I.

PART 3 - THE EXECUTIVE

5.1 France has a dual executive system in which the President of the Republic and the Prime Minister are both responsible for the executive functions of the government. The President is the Head of State while the Prime Minister is the Head of Government.

6. Head of State

6.1 The President of the Republic is the Head of State. He is elected for seven years by direct universal suffrage.

Selection of Candidates

6.2 A candidate for the office of President needs the endorsement of at least 500 citizens ("sponsors") who are members of certain public bodies¹. To make the endorsement valid, sponsors have to come from at least 30 of the some 100 *départements*² and overseas territories, and no more than 10% of the sponsors from a single *département* or territory. Sponsorship is public, not private nor confidential. This system has resulted in on average six or seven candidates, sometimes reaching a dozen for each election.

6.3 In France, the seven-year presidential term is not immutable as it can finish earlier. Unlike the American presidential system, there is no date on the calendar which one can mark to reserve for presidential election. There is no Vice President. If a President resigns before his term expires (as Charles de Gaulle did in 1969), or if a President dies in office (as Georges Pompidou did in 1974), a presidential election must be held between 20 to 35 days after the incumbent has ceased to hold office.

6.4 In the Fifth Republic, most presidential candidates since 1969 have previously held the office of Prime Minister.

¹ These public bodies include the Parliament, the Economic and Social Council (a constitutional advisory body on economic matters), *départemental* councils (of whom there are some 3 000), the and office of elected mayors (of whom there are about 38 000).

² A *département* is a geographical administrative unit in France. It can be considered as almost equivalent to a county. There are some 100 *départements* in France.

Election Method

6.5 Election of the President of the Republic is by direct election³ through an absolute majority system with two rounds: If no candidate receives an absolute majority in the first round, a second round (the run-off election) is held between the top two candidates, and the one who wins a majority in the second round is the winner. The rationale is that electing candidates by mere pluralities violates the basic democratic principle of majority rule; hence, a device is installed to ensure that each winner has at least over 50% (a majority) of all the votes. An example is described below.

6.6 There were nine candidates in the latest presidential election held in April 1995 and no candidate obtained an absolute majority of the votes in the first round. The second round, or run-off election, returned Jacques Chirac, the current President of the Republic of France, who was the runner-up in the first round. The voting results are summarised in Table 1 below:

Table 1 - French Presidential Election, April 1995

<u>1st Round</u>		<u>2nd Round</u>	
<i>Name of Candidate</i>	<i>Share of Vote</i>	<i>Name of Candidate</i>	<i>Share of Vote</i>
Jospin	23.3%	Chirac	52.2%
Chirac	20.8%	Jospin	47.8%
Balladur	18.6%		
Le Pen	15.1%		
Hue	8.6%		
Laguiller	5.3%		
de Villiers	4.7%		
Voinet	3.3%		
Cheminade	0.3%		

Removal

6.7 The Constitution provides that the President of the Republic shall not be held accountable for official acts performed in the exercise of his office, 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. This High Court is formed by members of Parliament and is instituted for this specific purpose only. In case the indictment is declared definitive by the Constitutional Council, the election of a new President shall take place.

³ Constitutional amendment in 1962 abolished the previous cumbersome electoral college system and introduced direct election.

Functions and Powers

6.8 The functions and powers of the President of the Republic are summarized below:

- sees that the Constitution is observed; is the arbiter of the Constitution and guarantor of national independence and territorial integrity;
- appoints the Prime Minister and Ministers, and presides over the Council of Ministers (Cabinet);
- promulgates laws and may ask Parliament to re-consider a bill before promulgation;
- may dissolve the National Assembly;
- is the Commander of the armed forces and may assume emergency powers if the nation is threatened;
- negotiates and ratifies treaties; ensures that international obligations are fulfilled;
- appoints three members of the Constitutional Council and may refer a bill to the Constitutional Council; and
- may propose that a referendum be held.

7. Head of Government

7.1 The Prime Minister is the Head of Government.

Selection of Candidates

7.2 The Prime Minister is selected by the President of the Republic after an election is held for the National Assembly. The Prime Minister is usually chosen on the basis that he can win the support of a parliamentary majority.

Appointment

7.3 The Prime Minister is appointed by the President of the Republic.

Removal

7.4 The President terminates the functions of the Prime Minister when the latter presents the resignation of the Government.

7.5 In the fifth Republic, not a single resignation of the Prime Minister has resulted from a motion of censure. Of the 14 replacements of Prime Ministers since 1958, 13 have been either at the President's discretion or have followed presidential or legislative elections, and only one (that of Chirac in 1976) was caused by the Prime Minister's voluntary resignation.

Functions and Powers

7.6 The functions and powers of the Prime Minister are summarized below:

- directs the actions of the administration and the armed forces;
- is responsible for national defence;
- ensures the execution of the laws; and
- except pre-empted by the President under the Constitution, exercises regulatory and appointment powers.

7.7 The Prime Minister heads the Government which determines and conducts the policies of the nation. The Government is constitutionally responsible to the National Assembly (Articles 20, 49 and 50). The acts of the Prime Minister shall be countersigned, when circumstances so require, by the Ministers responsible for their execution (Article 22).

8. Discussions on the Dual Executive System

8.1 The Constitution provides for two major executive figures in France, the President of the Republic and the Prime Minister. Their responsibilities overlap in domestic policy and national defence. These areas tend to become the grounds where the two executives compete for authority. For example, while the Prime Minister and the Council of Ministers are responsible "to determine and conduct the nation's policies" (Article 20), the President chairs the meetings of the Council of Ministers (Article 9).

8.2 There can be daily tensions between the President of the Republic and the Prime Minister as for example, the incumbent President may be interested in re-election while the Prime Minister may be a potential rival for presidential candidacy. The political leadership that the Prime Minister can exercise depends on the amount of autonomy the President gives him.

8.3 Before 1986, when the President of the Republic and the Prime Minister both came from the same political group(s), a two-level leadership was the norm. The President provided political leadership in all areas of government, dominating in all areas where responsibilities between him and the Prime Minister overlapped. The Prime Minister dealt with Parliament, the administration, the political parties, the trade unions and (to an extent) public opinion. The President of the Republic operated at a more exalted level, avoiding unnecessary political risks.

8.4 However, this arrangement was put to the test in two recent periods when the President of the Republic and the Prime Minister came from opposing political forces. In 1986-1988 and 1993-1995, the Prime Minister had governmental power and the President had become an arbiter. These two periods are known in France as periods of *cohabitation*.

8.5 These two periods lay down a new formula whereby the Prime Minister has become the centre of the activity of the government as he exercises his functions and powers in full. The Prime Minister held separate meetings with all the other Ministers at his office. The Council of Ministers became more of a reporting, rather than a decision-making forum for the President of the Republic. Internal policy no longer depends on the President, neither does the President has the power to initiate policy. The President has, however, retained the power to stop proposals, or at any rate to delay them. He intervenes by means of comments and criticisms on issues concerned with the allocation of power between the executive, the legislature and the judiciary. These issues usually related to individual liberties, law and order, and social welfare.

9. The Cabinet and Ministers

9.1 The Cabinet is known as the Council of Ministers. It is chaired by the President of the Republic, and membership consists of the Prime Minister, the Ministers and a number of junior ministers known as Secretaries of State. There are about 40 members of the Council of Ministers and positions tend to be hierarchical.

9.2 One characteristic of the French Cabinet is that the Head of State chairs cabinet meetings, and this is not usually found in other parliamentary Cabinets. Deliberations involve all Ministers on the basis of collective ministerial responsibility. There are no votes in the Council of Ministers and debates are secret. Even though the President of the Republic is the Chairman, he has no power of veto.

Selection of Candidates

9.3 There are no specific constitutional descriptions or requirements of Ministers. Ministers are selected by the Prime Minister who proposes them for the President's appointment. Ministers have usually been chosen both on the basis of party representation in the National Assembly and circumstances surrounding the presidential campaign. A growing number of Ministers have had civil service background. Some Ministers have come from the Senate.

Appointment

9.4 The Constitution provides for the President of the Republic, on the proposal of the Prime Minister, to appoint Ministers.

Removal

9.5 The Constitution provides for the President of the Republic, on the proposal of the Prime Minister, to dismiss Ministers.

Functions and Powers

9.6 According to Article 20 of the Constitution, the Cabinet shall determine and direct the policy of the nation and shall have at its disposal the administration and the armed forces.

9.7 The functions and powers of Ministers are twofold: they jointly participate in the determination and management of government policy, and they are heads of departments. The Constitution prescribes that certain acts of the President of the Republic and the acts of the Prime Minister shall be countersigned, when circumstances so require, by the ministers responsible for their execution.

Characteristics of the Cabinet and the Ministerial System

9.8 There are three main characteristics of the French Cabinet and ministerial system: (a) a higher separation of executive and legislative powers and functions than in other parliamentary systems; (b) dominance of prime-ministerial authority; and (c) gradual undermining of the influence of higher civil servants and Cabinet authority by the growth of ministerial *cabinets* and interdepartmental committees.

9.9 Since the beginning of the Fifth Republic, Ministers have not been allowed to exercise any parliamentary mandate (Article 23). This has resulted in more importance being attached to the management of ministerial departments than to political or governmental functions. The separation of the executive and the legislature has been higher than other parliamentary systems.

9.10 The Prime Minister dominates the Cabinet as a result of his ability to propose names for ministerial appointments. He also determines the rules of conduct that Ministers must follow, and he is the one who resolves conflicts between individual Ministers. The power of the French Prime Minister over other Ministers is greater than that of many foreign heads of government, and that power has not diminished as a result of the emergence of a dual executive.

9.11 Traditionally, the heads of the divisions of the ministries were responsible for drafting bills or decrees. The process involved consultation with those concerned and especially with pressure groups. In the past decade, owing to the difference in policy outlook between Ministers and higher civil servants, some Ministers have often by-passed ministries and resorted to employing their own personal staff (known as the ministerial *cabinets*) to prepare the initial drafting of bills or decrees. Thus, the influence of the bureaucracy has been undermined by the ministerial *cabinets* to a certain extent in the policymaking process.

9.12 Similarly, Cabinet authority has been undermined to a certain extent by the growth of inter-departmental committee. Inter-departmental committees are set up to examine detailed provisions of draft bills or decrees and to ensure that the agreement of the Minister concerned is obtained. These committees are chaired by a member of the Prime Ministers' *cabinet* (i.e. his personal staff) and include higher civil servants and the members of the ministerial *cabinets*. Disagreements are resolved by a decision of the Prime Minister's office, which is often made by the head of the Prime Minister's *cabinet* (who is also a member of the Prime Minister's personal staff). Many issues have been resolved at the inter-departmental committee level rather than the Cabinet, thus, undermining Cabinet authority to a certain extent.

10. The Bureaucracy -- The Senior Public Officers

10.1 The French civil service system dates back to the 15th century. Although the criteria of professionalism and merit were introduced in the early 1800s, bureaucrats were and remain expected to be partisan--to be supporters of the regime and proponents of its ideology.

10.2 The French civil service is biased to favour a conservative and technical outlook. Today, there are about 10 000 higher bureaucrats out of over five million public servants⁴ who are above the four basic categories of civil servants⁵. They are mainly of upper and upper middle class lawyer or technical background who are from Paris. Their outlook is primarily conservative and urban, which means that they are not likely to sympathise with the causes embraced by many working-class or rural members of Parliament.

10.3 As higher civil servants in France are not expected to be completely non-partisan, they may join political parties, express their ideological preferences, and even stand for election to Parliament (if elected, they receive leave of absence without loss of seniority). If they lose the election, they return to their bureaucracy and continue to work as civil servants.

10.4 In many cases, higher civil servants who have shown support for the regime have been appointed to the Cabinet. Presidents and Prime Ministers in the Fifth Republic have shown a continuing preference to appoint higher civil servants to the Cabinet. Thus, higher civil servants have become more politicized and at a change of policy direction or presidential or parliamentary mandate, higher civil servants might be dismissed by the President or the Prime Minister.

⁴ The civil service includes 900 000 teachers from elementary to university levels, 450 000 employees of the postal and telecommunications services, 200 000 employees of the Finance Ministry (including tax collectors), 420 000 employees of the Defence Ministry (including 300 000 military personnel), and the full time local agents of the national government (e.g. prefects and their Deputies, subprefects), the officials or "public service agents" of *départments* (100 000) and communes (about 600 000), and the employees of public hospitals (650 000), the railroads (250 000), gas and electricity (140 000), and other public corporations.

⁵ Class A: Administrative which requires university education, Class B: Executive which requires secondary school education, Class C: Clerical which requires completion of elementary school; Class D: Custodial which requires very little formal schooling.

PART 4 - THE LEGISLATURE

11. The National Assembly

11.1 The National Assembly is one of the Chambers which, with the Senate, constitute the French Parliament. The National Assembly consists of 577 Deputies elected by direct universal suffrage.

Composition

11.2 Deputies generally belong to political parties and groups.

11.3 The National Assembly is headed by a speaker called the President, elected by its membership. The speaker is assisted by a "steering committee", known as the Presidents' Conference. The Presidents' Conference consists of the leaders (also called presidents) of the various parliamentary parties and is, in a formal sense, responsible for the allocation of committee seats and the allotment of time for debate on most legislative items.

Election Method

11.4 Of the 577 Deputies of the National Assembly, 555 represent metropolitan France and 22 represent overseas *départements, collectivités territoriales* and territories. The constituencies are electoral districts divided according to population. The delimitations of electoral districts are reviewed every 12 years.

11.5 Deputies of the National Assembly are elected under a single-member constituency system of direct election. French electoral laws stipulate the way elections for Deputies are carried out. All citizens aged 23 and older are entitled to stand for election to the National Assembly and all those aged 18 and over may vote. Deputies are elected for five years, and their term is shortened if Parliament is dissolved by the President of the Republic.

11.6 A candidate who obtains majority, which is more than half of the votes cast, and comprises the votes of at least one quarter of registered voters, is elected on the first ballot.⁶ If no candidate obtains this number of votes, a second ballot is held, at which a plurality, i.e. a relative majority, suffices--the candidate obtaining the highest number of votes is elected.

⁶ For example, in a constituency where there are 1 000 registered voters, in order to be elected on the first ballot, a candidate needs at least 250 votes if 499 votes were cast.

Dissolution

11.7 If the Prime Minister and his Ministers lose their parliamentary support, they must resign and be replaced by another government, unless the President dissolves the National Assembly in the hope that new elections will resolve the situation more favourably for his supporters. The Constitution provides that the National Assembly may not be dissolved during the exercise of emergency powers by the President of the Republic (Article 16).

Functions and Powers

11.8 The functions and powers of the National Assembly are set down in the Constitution. They are principally:

- to adopt statutes; and
- to supervise the Government.

11.9 If the National Assembly produces a motion of censure, the Government will be compelled to resign. Where necessary, members of the National Assembly may also form a High Court of Justice with members of the Senate to indict and try the President of the Republic for high treason (see paragraph 6.7 above).

12. The Senate

Composition

12.1 The Senate has 321 seats, of which 296 are for metropolitan France, 13 for the overseas *départements*, *collectivités territoriales* and territories, and 12 for French nationals abroad. Senators are elected for nine years by an electoral college. One-third of the Senate is elected every three years.

12.2 Similar in organization to the National Assembly, the Senate is headed by a speaker called the President, elected by the members after each partial election.

Election Method

12.3 Senators are elected indirectly by electoral colleges. Electoral colleges are based on *départements*; the number of seats is based on *départemental* population. The electoral colleges are composed of the National Assembly Deputies, more than 3 000 delegates from the Councils of the *Départements* and more than 100 000 delegates of Municipal Councils. There are two election methods: election is by majority vote with two rounds in *départements* with four Senators or less, and by proportional representation according to the highest average number of votes in *départements* with five or more Senators.

Dissolution

12.4 There is no provision in the Constitution for the dissolution of the Senate.

Functions and Powers

12.5 The Constitution specifies that the Senate "ensure the representation of the territorial units of the Republic" and that "Frenchmen living outside France shall be represented in the Senate". The functions and the powers of the Senate are similar to those of the National Assembly. The President of the Senate assumes between 20 and 35 days the functions of the President of the Republic when there is a vacancy in the latter's office.

12.6 Like the National Assembly, the Senate can produce a vote of censure but the Constitution does not give any effect to such votes for dismissing the government. Cabinet Ministers may also be appointed from Senators.

12.7 The Senate has been adopting an independent attitude as local politicians feel that national economic policies advocated by various governments have tended to discriminate against provincial interests. The Senate's independence has been expressed, not only in repeated requests for the appointment of committees of inquiry, but also in appeals to the Constitutional Council to review government bills it did not like. The Senate is widely viewed as an institutionalised opposition and "censor" of the government.

13. Legislative Procedure

Passage of a Bill

13.1 Formal legislative procedure basically follows the pattern established in previous French republics. When a bill is introduced, it is first sent to the *bureau*, which consists of the speaker, Deputy speakers, secretaries who take minutes and count votes, and *questors* who are in charge of supplies. Each Chamber has its own *bureau*. The speaker then transmits the bill directly to a legislative committee. After the committee has completed its deliberations, the *rapporteur* (Deputy or Senator who chairs that committee) formally reports the bill to the floor for the initial "reading". The ensuing debate, which provides an opportunity for the introduction of amendments, is followed by a vote.

13.2 After its passage in the Assembly, the bill is transmitted to the Senate. If Senate accepts the original version of the bill, it is sent to the Government for signature.

13.3 If Senate rejects the bill, one of the following four procedures may take place:

- there can be a resort to the shuttle (*navette*), i.e. the sending of a bill back and forth between the two Chambers until a common version is achieved; or
- the Government may request the appointment of a conference committee of seven members from each Chamber to work out a commonly accepted version--this is the method used for about half of the bills; or
- the Government may ask each Chamber for a "second reading" (i.e., a reconsideration and new vote on the original bill); or
- if disagreement persists, the Government may ask the National Assembly to determine the final version of the bill by a majority of the votes cast.

Voting Majority Requirements

13.4 In both the National Assembly and the Senate, a bill is passed if it obtains an absolute majority of the votes cast.

PART 5 - EXECUTIVE-LEGISLATIVE RELATIONSHIP

14. Ministerial Responsibility

Legal Basis

14.1 The Government is responsible to Parliament (Article 20).

14.2 There are three conditions under which the Prime Minister and the Government must resign: "When the National Assembly adopts a motion of censure, or rejects the programme or a declaration of general policy of the Government, the Prime Minister must submit the resignation of the Government to the President of the Republic" (Article 50).

Dismissal of Government

14.3 Distinct procedures are available to Parliament for ousting a Government. Under Article 49 of the Constitution, the National Assembly may, on its own initiative, move a motion of censure; alternatively, the Prime Minister may "provoke" a censure motion by engaging the responsibility of his Government to a general policy or programme or the text of a bill: that is, the bill is considered adopted unless the National Assembly produces a motion of censure within 24 hours after the Government has engaged its responsibility. In either case, if the motion passes, the Government must resign.

14.4 An Assembly-initiated censure motion must be co-signed by at least 10% of the members of the National Assembly. The vote on the motion can only occur after a "cooling-off" period of 48 hours, and the motion must be adopted by an absolute majority of all members of the National Assembly. Any Deputy may co-sponsor not more than three Assembly-initiated censure motions during a single ordinary session.

14.5 Since the founding of the Fifth Republic, about 50 censure motions have been introduced in the National Assembly (mostly motivated by discontent over economic policy), but only one of them was successful or, to put it more accurately, would have been successful if the President had adhered to the Constitution.⁷ The Parliament has thus far failed to oust a single Prime Minister mainly because the opposition has lacked the necessary votes.

⁷ In 1962, de Gaulle's constitutional proposal in connection with the change in the method of electing the President had provoked a storm of protest in both Chambers of Parliament. The National Assembly then had more than the required absolute majority for censure of the Government headed by Pompidou. However, instead of dismissing Pompidou, de Gaulle expressed his lack of confidence in the National Assembly by dissolving it.

14.6 The "provocation" approach has been an effective tool of the Government in policymaking by simple declaration. Since 1958, the Government has engaged its responsibility more than 80 times successfully. On each occasion, no motion of censure had been produced within 24 hours by the National Assembly after the Government's engagement of responsibility. In 1998-1999, seven such declarations were made, three of which were related to the situation in Kosovo.

15. Initiation of Legislation

15.1 The Prime Minister and members of Parliament (including both Deputies and Senators) alike have the right to initiate legislation. However, bills and amendments introduced by members of Parliament shall not be considered if they reduce public financial resources or increase public expenditures. Final decision on bills and legislative amendments proposed by the Senate lies with the National Assembly.

15.2 Bills of the Government are given priority⁸. As the Government is constitutionally empowered to determine the agenda of the Parliament, the Government can ensure that its bills have priority over private members' bills.

15.3 The Government also employs a procedure known as the "blocked vote" to eliminate parliamentary input on certain details of a bill (Article 44). Under this procedure, the Government stipulates what the extent of the debate shall be, what sections of the bill shall be open to amendments, and how much time shall be allocated to specific sections of a bill. The National Assembly is asked to decide by a single vote on all or part of the bill under discussion, retaining only the amendments proposed or accepted by the Government.

15.4 During the two periods of *cohabitation* in 1986-1988 and 1993-1995, the blocked vote procedure has been used more frequently, possibly because of the belief that the government did not have reliable parliamentary majorities. Nevertheless, blocked-vote bills have not always had easy passage in the Senate, which has rejected a sizeable number of them.

15.5 The prohibition against private members' bills on appropriations may be extended to virtually any public matter. The proportion of private members' bills which were passed by the Parliament in the Fifth Republic has been small. Table 2 below shows the number of private members' bills passed in the various National Assemblies between 1959 and 1996:

⁸ A constitutional amendment in August 1995 gave precedence to business determined by the National Assembly at one sitting per month and the Presidents' Conference may determine how the item remaining on the agenda are to be debated.

Table 2 - Bills Passed by the Parliament between 1959 and 1996

National Assembly/ Period*	Total number of bills passed (a)	Number of private members' bills passed (b)	Proportion of private members' bills passed (b)/(a)
First (1959)	52	1	2%
Second (1962-1967)	437	55	13%
Third (1967-1968)	168	40	24%
Seventh (1981-1986)	500	40	8%
Eighth (1986-1988)	179	33	18%
1993	40	0	0
1995-1996	108	14	13%

Note : * Information on other years is not available.

Source : *Le Monde*, 17 July 1993, figures (updated) furnished by Philippe Séguin, 25 June 1996

15.6 The Government is authorised by Article 41 to declare a parliamentary bill or an amendment illegal or "contrary to a delegation of authority", and any dispute may be settled by the Constitutional Council on request by either institution. At the end of March 2000, 32 bills presented since October 1997 (the beginning of the current session of the National Assembly) have been settled by the Constitutional Council, 12 of which have been confirmed as constitutional, 15 confirmed as partially constitutional, and five bills have been rejected as unconstitutional.

16. Monitoring of the Executive

Legal Basis

16.1 Apart from questions by members of Parliament, the Constitution does not grant any specific authority for the Parliament to monitor the executive. However, there is a strong tradition of the legislature monitoring the executive branch of government. The modes are described below.

Questioning

16.2 Article 48 provides for "at least one sitting a week shall be reserved, by priority, to questions by members of Parliament and to responses by the Government".

16.3 To allow a more up-to-date control of the government's activity by Deputies and Senators, a procedure for questioning the Government modelled on the British system was adopted in 1974. Two afternoons in a week in the National Assembly (Tuesday and Wednesday afternoons) and one day in a month in the Senate (on a Thursday) members of Parliament can question the Government very quickly on current affairs issues. These question sessions have been highly successful politically as they are aired live on television. In 1998-1999, 719 oral questions were asked in 62 sittings. Written questions and answers - more than 12 514 questions and 10 516 answers in 1998-1999 - are published in the *Journal officiel*.

Inquiry Commissions

16.4 Inquiry commissions gather information and carry out investigations on a given question. They are created by a vote in the Chamber concerned, and they may carry out their investigations for a period of six months. At the end of their work they adopt a report which is made public. Their hearings are open to the public. When the Senate is in the opposition, or when the commissions are critical of the previous majority's handling of affairs, they can become a powerful instrument of opposition strategy. Since 1998, the National Assembly has held nine and the Senate has held two inquiry commissions.

Information Missions

16.5 Information missions have a simple legal framework allowing them to seek information, hold hearings, and publish reports, usually prior to the consideration of a policy or adoption of a bill. They are simpler in terms of reference and smaller in scale than the inquiry commissions. These information missions can touch on a variety of subjects. More especially, these missions serve as a place for discussions, confrontations, and at times conciliation between political parties and coalition partners. The National Assembly has held 30 and the Senate has held 15 information missions since 1998.

Debates and Declarations

16.6 Sometimes the Government or Deputies or Senators organize debates on a given subject or make declarations that give rise to debate. Such declarations allow members either to voice their opinions on perceived government deficiencies on a current issue or to make them more widely known than during question time. In 1998-1999, the National Assembly held 37 and the Senate held four debates.

Vote on Resolutions

16.7 Article 88-4 in the Constitution imposes an obligation on the Government to submit to both the National Assembly and the Senate proposals concerning the European Union. This article gives Parliament the power to vote on resolutions--that is to give an orientation or an opinion on projects before the Government submits them to the European Council of Ministers. So far, the National Assembly and the Senate have followed almost daily the evolution of normative projects drafted by European Union policy makers. A total of 27 such resolutions have been voted since 1 January 1998. This could be a new development in which the Parliament makes an input to foreign policy which is constitutionally in the domain of the Presidency of the Republic.

Ombudsman

16.8 In France, the ombudsman system is known as the mediator (*médiateur*) system.⁹ The French mediator receives complaints through the "filter" of a National Assembly Deputy or Senator rather than directly from the citizen.

16.9 The mediator's competence extends to all areas of administration: ordinary, social security, nationalized industries, and justice. The mediator can request any information from administrative agencies that he considers pertinent and can initiate proceedings against malfeasant civil servants.

16.10 The mediator submits an annual report to the President of the Republic and the Parliament that contains a summary of cases dealt with, as well as recommendations for desirable legislative and administrative reforms (of which more than 500 had been introduced by 1994). The number of complaints received by the mediator had grown steadily--from 1 600 in 1974 to more than 45 000 in 1996.

17. Scrutiny of Public Expenditure

17.1 All finance bills for passage by Parliament are to be first submitted to the National Assembly (Article 47).

17.2 Two Parliamentary committees, one in the National Assembly and the other in the Senate, are responsible for the scrutiny of public expenditure. More than 40 special *rapporteurs* in the committees continually examine public expenditure and present annual reports.

⁹ The first mediator was appointed by the government in 1973 to a six-year, non-renewable term.

17.3 The Government presents an annual report to Parliament on Budget execution at the end of each financial year. An independent Audit Office reports annually on Budget execution, submits a general report to the Assembly, and can undertake special inquiries on the request of the two Parliamentary Finance Committees.

Budget Approval

17.4 The national budget is considered each year in early October for the fiscal year which starts on 1 January of the following year. The National Assembly has 40 days in which to process a finance bill, and the Senate 15 days. If, within 70 days, the two Chambers of Parliament have not formally approved a budget bill, the Government may enact the budget by decree (Article 47). In practice, the Government has never promulgated its budget by decree.

Revision of Budget

17.5 Article 40 of the Constitution limits the capacity of Parliament to revise the budget: "Bills and amendments introduced by members of Parliament shall not be considered when their adoption would have as a consequence either a diminution of public revenues or the creation or increase of public expenditures".

17.6 Each national budget consist of two bills. The first concerns revenues (i.e. taxes) and the second concerns expenditures (i.e. the individual budgets for each ministry). By law, the second part cannot be considered until the first part is adopted. Therefore, in practice the budget debate is a debate on two bills, and the censure procedure can be used on either or both. Since the first part of the budget contains the "Article of Equilibrium", an article setting the level of deficit permitted by the budget, activity on the second part of the budget is sharply circumscribed after the first part of the budget is voted.

Special Parliamentary Devices

17.7 Senate committees can appoint certain Senators to scrutinize the management of state-owned enterprises. The latter refers to enterprises in which state ownership is over 50%. The Finance Committee of each Chamber scrutinizes nationalised enterprises. Each Chamber can create investigative or inspection committees.

PART 6 - SOME FEATURES OF POLITICAL PARTICIPATION

18. Political Parties

Legal Regulatory Framework

18.1 Article 4 of the Constitution provides that political parties shall play a part in the exercise of the right to vote. Political parties shall be freely established and freely carry out their activities, but they must respect national sovereignty and democracy. Candidature and financing of elections are regulated by the Electoral Code which has been modified many times since its publication more than 200 years ago.

Registration

18.2 A Commission established under the Council of the State (see paragraph 5.4 above) is responsible for electoral affairs. Information specific to the registration of political parties is not available.

Campaign Finance

18.3 A Political Life Openness Committee was established in 1990 under the Council of the State to oversee the finances and operations of political parties. It is chaired by the Vice-President of the Council of the State. The Electoral Code restricts the maximum of donations received by each political party to 50,000 francs (HK\$63,500)¹⁰ per annum per donor and the maximum of donations to be received by each candidate to 30,000 francs (HK\$38,100) per donor for each presidential, parliamentary or regional elections. Foreign donations are not allowed. There are statutory ceilings on election expenses. Campaign accounts must be published and submitted with the candidate's other required papers to the Committee. Any donation higher than 1,000 francs (HK\$1,270) needs to be made by cheque and be declared.

¹⁰ In 1999, the average exchange rate of the French currency was FFr1 = HK\$1.27. Census and Statistics Department, *Hong Kong Monthly Digest of Statistics, March 2000*, p. 117, Table 7.12.

Public Support

18.4 Donations to political parties and election candidates are tax-deductible with a ceiling set at 50,000 francs (HK\$63,500) per party per annum and 30,000 francs (HK\$38,100) per candidate per election. Certain media time is provided free for parties and political groupings represented by parliamentary groups in the National Assembly and/or the Senate. Certain election expenses are reimbursed to parties at least 5% of total votes cast. Political parties are no longer allowed to receive money from trade unions or companies since 1995.

19. Recent Electoral Reform

19.1 The French adopt a number of different electoral systems for the seven kinds of elections held in the country, including single-member constituency with two rounds of election and various proportional representation systems¹¹. For details, please refer to Appendix II.

19.2 There has been no recent electoral reform in France.

20. Constitutional Amendments Related to Political Reform

20.1 The initiative for amending the Constitution belongs to the President of the Republic, the Prime Minister, and members of Parliament. No amendment shall be commenced or continued if the integrity of the territory is jeopardized. The republic form of government shall not be the subject of constitutional amendment.

20.2 The Constitution describes two procedures by which the Constitution can be revised (Articles 89 and 11).

20.3 In the first procedure (Article 89), revisions must be passed in identical forms by the National Assembly and the Senate before being submitted for approval either by popular referendum or in the case of a government bill if the President so decides, through a joint session of the National Assembly and the Senate called a Congress. In the case of Parliament being convened in Congress, the proposed amendment shall be approved only if it is accepted by three-fifths majority of the votes cast.

¹¹ Proportional representation is used at municipal level, while at European elections French voters have been invited to choose among national lists of candidates (each with 87 names on it, corresponding to the French representation in the Strasbourg parliament). Please see Appendix II for a table which summarizes the different electoral systems used in France.

20.4 The basic difference between the two ways in the procedure under Article 89 is that the reforms submitted to the people must first have been passed by each Chamber of Parliament. Once this has happened, the referendum is obligatory for revisions initiated by Parliament, and optional for those initiated by the President. With the agreement of the Prime Minister, the President can decide to submit the draft revision not to the people but rather to the Congress.

20.5 In practice, all constitutional amendments initiated by the President that have passed since 1958 were approved by the Congress, and no referendum has been held under the provisions of Article 89 for amendments initiated by the President. The most recent amendment was made on 8 July 1999 regarding the promotion of equality between women and men in voting and electoral affairs.

20.6 The second procedure for amending the Constitution lies in Article 11 of the Constitution. Article 11 provides for the President of the Republic, on the proposal of the Government or Parliament, to submit to a referendum a bill that deals with certain prescribed subject matters. These subject matters include the organisation of the public authorities, reforms pertaining to the economic or social policy of the nation and to the public services concerned, or ratification of a treaty that might affect the functioning of national institutions.

20.7 The second procedure has been used twice only since 1958, both by President de Gaulle. In 1962 this procedure yielded a positive result on the question of the election of the President of the Republic by direct universal suffrage. But in 1969 there was a negative vote on the regionalization of France and the modification of the Senate's powers, resulting in de Gaulle's resignation.

21. Referendums

21.1 The Constitution provides for referendums to be held under two circumstances: (a) when Parliament proposes and passes amendment to the Constitution which requires subsequent approval by a referendum (Article 89); and (b) when the President of the Republic, on the proposal of the Government or on the joint motion of the Parliament, submits to a referendum a bill that deals with certain prescribed subject matters (Article 11). (See paragraph 20.6 above).

21.2 Eight referendums have been held in the Fifth French Republic between 1958 and 1995, five of which related to foreign affairs (Algeria, New Caledonia, and European Union). The turnout has been in the region of between 70% and 80% of the whole population, except once--that held in 1988 on the granting of autonomy to New Caledonia, when less than 40% of the population expressed their opinion by voting. A summary of these referendums is in Table 3 below.

Table 3 - Referendums in the Fifth French Republic Between 1958 and 1995

Date	Issue	Yes (%)	No (%)	Turnout (%)
28.9.1958	Adoption of the Constitution of the 5 th Republic	85.1	14.9	79.5
8.1.1961	Self-determination and organization of public powers in Algeria	75.0	25.0	73.8
8.4.1962	Independence of Algeria and extraordinary legislative powers (Evian agreements)	90.8	9.2	75.3
28.10.1962	Direct election of President	62.2	37.8	77.0
27.4.1969	Senate reform and creation of regions	47.6	52.4	80.1
23.4.1972	Enlargement of European Community	68.3	31.7	60.2
6.11.1988	Autonomy for New Caledonia	80.0	20.0	36.9
20.9.1992	Adoption of Maastricht treaty	51.0	49.0	69.8

Note : All figures are for the whole of France (metropolitan and overseas)

Source : Ministry of Interior, France

Appendix I**Constitutional history of the five French republics**

(Extracted from Robert L. Maddex, *Constitutions of the World*, 1996)

A.1 In May 1789, during the reign of Louis XVI, with financial and political conditions crumbling, elected Deputies met at the first estates general assembly held since 1614. When the First Estate, the clergy, and the Second Estate, the Nobles, rejected the request of the Third Estate, the urban bourgeoisie, to vote by head count rather than by orders (estates), the Third Estate adopted itself as a national assembly and agreed to implement constitutional reform. These acts represented a fundamental challenge to the monarchy and the nation's existing social and political order.

A.2 After the revolutionaries stormed the royal fortress and prison called the Bastille on 14 July 1789, France's Rubicon had been crossed. On August 26, the National Constituent Assembly, formed by the revolutionaries, issued the Declaration of the Rights of Man and of the citizen, which affirmed the rule of law, equality before the law, and representative government and guaranteed private ownership of property and conditional free speech.

A.3 Since the revolution in 1789, France has had 15 constitutions. On 13 September 1791, a constitution was promulgated by a legislative assembly, but after attempts to restore the monarchy were repelled, a convention was called and a new constitution was promulgated on 10 August 1793. Subsequently, a document was adopted in 1795, but it failed to limit acts of the legislature. Desiring stronger executive leadership, the legislature drew up a new constitution in 1799, which made Napoleon first consul with substantial executive powers for 10 years, while preserving the supremacy of the civilian administration. In 1804, however, Napoleon crowned himself emperor of France.

A.4 After Napoleon's defeat, the monarchy was restored under Louis XVIII, the brother of Louis XVI. As king he wielded strong executive powers under both an 1814 constitutional charter, which required ministers to countersign royal acts and the parliament to consent to taxation, and an 1815 charter. After a revolution during the reign of Charles X, who tried to restore the divine right of kings, further unrest resulted in the Second Republic. Its 1848 constitution lasted until a plebiscite re-established the hereditary empire in 1852 under Louis Napoleon, Napoleon's nephew, who was popularly elected president of the Second Republic.

A.5 Defeat at the hands of Prussia and the capture of the emperor in 1870 set the stage for the creation of the Third Republic in January 1875. To avoid repeating the mistakes of the Second Republic, the constitution was amended to have the president elected by the parliament rather than by popular vote. The Third Republic lasted until 21 October 1945, when it was repudiated in a referendum by a large popular majority.

A.6 The Fourth Republic was born of the aftermath of World War II and anxiety over the burgeoning political power of the Communist and Socialist Parties. In a speech in Bayeux on 16 June 1946, General Charles de Gaulle argued for a strong presidential regime having a non-partisan head of state while preserving the parliamentary system. The voters, however, approved a bicameral assembly, with the upper house and the President having limited authority. Political unstable governing coalitions, a costly war in Algeria, and in real possibility of a civil war, however, doomed the Fourth Republic.

A.7 On 1 June 1958, de Gaulle, now Prime Minister, was granted emergency power for six months, and a new constitution was prepared by a committee of experts and ministers. The result, which included a strong president who could select the Prime Minister and run the government, was adopted by 80% of those who voted on 28 September 1958, and was promulgated on 4 October 1958.

Appendix II

Electoral Systems in France

Election	Method	Term of Office (Years)	Electoral Constituency
President of the Republic	Two rounds; majority	7	Whole country
National Assembly	Two rounds; absolute majority 1 st round; plurality 2 nd round	5	Single-member constituency
Senate ^a	Indirect; for <i>départements</i> providing more than 4 Senators: proportional representation	9	<i>Département</i>
European Parliament	Proportional representation by party lists	5	Whole country
Regional council ^b	Proportional representation by party lists	6	<i>Département</i>
<i>Département</i> council ^c (Conseil général)	Two rounds; absolute majority 1 st round; plurality 2 nd round	6	Canton
Municipal council ^d	1. For cities of fewer than 3 500, majority "list" system. ^e 2. For cities of more than 3 500, two rounds: 50% to winner; 50% proportional	6	Commune (except for Paris, Lyons, Marseilles ^f)

- Notes :
- a "Staggered" elections; one-third of Senate is renewed every three years.
 - b Total number 26 (of which 4 are in overseas regions); size varies from 41 councillors (Limousin) to 197 (Ile-de-France).
 - c Total number 100 (96 metropolitan France, 4 overseas); size varies from 15 to 76. Total number of municipal councillors is 496,700 (1992).
 - d Total number (rounded off) 36,760 (1992); size varies from 9 (communes of under 100 inhabitants) to 163 (Paris).
 - e For cities of fewer than 2 500 there may be individual (i.e., nonlist) candidates.
 - f These cities are divided into *arrondissements*, each with its own council, which elected at the same time as the municipal council.

Source : Adapted from *Institutions et vie politique: Les notices* (Paris: Documentation Française, 1991), p. 70

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