

***Nomination and voting procedures governing
presidential elections in selected places***

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Prepared by

Yuki HUEN

**Research Office
Information Services Division
Legislative Council Secretariat**

**8th Floor, Murray Road Multi-storey Carpark Building
Central, Hong Kong
Telephone : (852) 3919 3638
Facsimile : (852) 2509 9268
Website : <http://www.legco.gov.hk>**

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Executive summary

1. The Decision of the Standing Committee of the National People's Congress makes it clear that the election of the fifth Chief Executive in 2017 may be implemented by the method of universal suffrage. According to Article 45 of the *Basic Law*, it is the ultimate aim to select the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The Standing Committee of the National People's Congress also put forth in its Decision that the nominating committee may be formed with reference to the current provisions regarding the Election Committee, and that the nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People's Government. This constitutional and legal framework requires the establishment of the nomination and voting procedures governing the Chief Executive election in 2017. Issues regarding the composition of the nominating committee, the method for nominating candidates and the voting procedures are of major concern to the public.
2. This study examines the nomination and voting procedures governing presidential elections in France, Poland, the United States ("the US") and Singapore. In the study of the nomination procedures, the following two major concerns are addressed: who can nominate a candidate and how to nominate a candidate. The four selected places have established specific mechanisms for nomination of presidential candidates, under which nomination can be made by elected representatives, political parties, voters, or through the endorsement of a committee. Eligible potential presidential candidates in France, Poland and the US can get a nomination by obtaining the support of the respective groups of people who are eligible to nominate, mostly in the form of signed nomination. In Singapore, potential candidates should obtain a "Certificate of Eligibility" issued by the Presidential Elections Committee before they can be officially nominated.

3. In France, presidential candidates are nominated through "sponsorship" by public office holders. To run for the presidency, potential candidates are required to receive at least 500 signed nominations from among some 42 000 elected officials, such as Members of Parliament and mayors. In order to show a broadly-based support, sponsors should come from at least 30 of the 101 départements (administrative divisions) and seven overseas territories. Moreover, not more than 10% of the required sponsors can come from a single département or overseas territory.
4. In Poland, presidential candidates are nominated by voters. Potential candidates are required to collect signatures from at least 100 000 eligible voters for nomination. An election committee comprising at least 15 citizens would be established in the name of a potential candidate to conduct the election campaign and gather the 100 000 signatures required on behalf of the candidate. Nomination is thus on an individual basis. However, political parties do play a part in presidential elections. For example, the election committees may add the names of the candidates' affiliated political or social organizations on the official list of candidates. Political parties are also allowed to provide funding for the election campaigns of presidential candidates.
5. The whole process of presidential elections in the US is quite complex on several fronts. While the *Constitution* sets out the age, citizenship and residency requirements for presidential candidacy, additional requirements are established by state laws and vary considerably among states. Major political parties can nominate candidates for the presidency. These parties usually select their candidates by primaries or caucuses. Small party and independent candidates are also able to run for the presidency if they have collected a specified number of supporting signatures from voters to file a "petition".
6. This study also covers Singapore although its President is largely a ceremonial head with certain executive powers. The Singaporean presidential election has a salient feature that there is a committee to ensure that presidential candidates have the qualifications set out in the *Constitution*. In Singapore, in order to be nominated, potential candidates have to obtain a Certificate of Eligibility issued by the Presidential Elections Committee, which attests that the Committee is satisfied with the candidate's integrity, good character and reputation, as well as his or her experience and ability to carry out effectively the functions and duties of the President.

7. As for the voting procedures, both France and Poland adopt the two-round system. In the first round of voting, an absolute majority (more than 50%) of all votes cast is mandatory to win the election outright. If no candidate obtains an absolute majority, a second round is held two weeks later between the two candidates who received the highest number of votes in the first round. In the second round of voting, the candidate with more votes is elected.
8. The US President is elected by the Electoral College. Technically speaking, the US voters do not vote directly for the President but vote within each state for a group of "electors" who are pledged to vote for a particular presidential candidate in the Electoral College. Since the electors are bound by their pledges, voters are actually making their choice among the presidential candidates. A first-past-the-post system is adopted for the general elections at state level. The winner in each state, with the exception of Maine and Nebraska, gains all the votes of that state in the Electoral College. A presidential candidate must receive an absolute majority of electoral votes in order to be elected.
9. Singapore operates a first-past-the-post electoral system under which the elected President does not need an absolute majority. The candidate who gets more votes than all other candidates is elected, regardless of his or her percentage share of votes cast, or the size of the margin of victory. This method has therefore aroused some critics in relation to the issue of legitimacy.
10. The restrictions on election campaign and finance may also affect candidates' participation in the electoral process. There are restrictions on election campaign in all the four places studied and the same rule applies: equal treatment for all candidates. All candidates, whether they are major party, small party or independent candidates, are guaranteed a level playing field. Meanwhile, with spending limits imposed on campaign expenses, small party and independent candidates can be placed on a more equal footing with the major party candidates. France, Poland and Singapore have spending limits for the elections, while there are no limits on campaign spending in the US as the Supreme Court has held that any limitation would constrain the right to free speech.

11. Another way to ensure equality between candidates is the provision of government subsidies. Presidential candidates in France are entitled to government subsidies once they got nominated. The state pays in advance a certain amount of money to the candidates when the official list of candidates is published. After the election, each candidate is entitled to reimbursement of campaign expenses from the government. In the US, qualified presidential candidates receive federal government funds to pay for the valid expenses of their campaigns in both the primary and general elections. While Poland and Singapore do not provide any government subsidies to the presidential candidates, these two places have imposed stricter spending limits than France and the US.

Nomination and voting procedures governing presidential elections in selected places

Chapter 1 – Introduction

1.1 Background

1.1.1 Hong Kong has a unique constitutional and legal framework for the Chief Executive election in 2017. Article 45 of the *Basic Law* provides that "[t]he method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures".

1.1.2 The Standing Committee of the National People's Congress ("NPCSC") promulgated on 29 December 2007 its "Decision on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage". As set out in the NPCSC's Decision, "in selecting the Chief Executive of the Hong Kong Special Administrative Region by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People's Government".

1.1.3 The Administration has affirmed that it will launch a comprehensive consultation on the nomination procedures and electoral arrangements for the Chief Executive to be returned by universal suffrage election strictly in accordance with the Basic Law and the NPCSC's Decision. The Administration has pledged that it will launch the consultation on the election methods of the Chief Executive in 2017 and the Legislative Council in 2016 and initiate the constitutional procedures at an appropriate time.¹

¹ "Election consultation planned: CE", *newsgov.hk*, 12 March 2013 and "LCQ1: The Chief Executive Election in 2017", *Government Press Releases*, 27 March 2013. The Chief Executive announced on 17 October 2013 that a task force had been established to prepare for a public consultation on political reform by year-end.

1.1.4 The constitutional and legal framework for the Chief Executive election in 2017 requires the establishment of the corresponding nomination and voting procedures. Issues regarding the composition of the nominating committee, the method for nominating candidates and the voting procedures are of major concern to the public.

1.1.5 At its meeting on 18 March 2013, the Panel on Constitutional Affairs ("the Panel") agreed to request the Research Office to undertake a research on overseas places with respect to their pre-selection and screening mechanisms for presidential elections, as well as the arrangements for conducting more than one round of voting to elect the President from a number of competing candidates.²

1.2 Research design

1.2.1 Hong Kong has its unique constitutional and legal framework for the Chief Executive election, and overseas experiences may not be directly applicable to the case of Hong Kong. This study only aims to provide some references on the general principles and ideas in light of the nomination and voting procedures governing presidential elections in overseas places.

1.2.2 The research outline proposed by the Research Office was deliberated by the Panel on 17 June 2013. Taking note of members' concerns, the Research Office, in consultation with the Panel Chairman, revised the research outline which was subsequently circulated to the Panel for endorsement in early July. As set out in the revised research outline, this study examines the presidential elections in France, Poland, the United States ("the US") and Singapore. These four places elect their Presidents by universal suffrage and the presidential elections are governed by distinct nomination and voting procedures as highlighted in the paragraphs below.

² See Letter dated 18 March 2013 from Hon Emily LAU to the Panel Chairman. Paper submitted to the Panel on Constitutional Affairs. LC Paper No. CB(2)833/12-13(02).

1.2.3 France is a semi-presidential³ democracy. To run for the presidency, potential candidates are required to receive at least 500 signed nominations from among some 42 000 elected officials, including Members of Parliament and approximately 36 000 mayors. Presidential elections in France are conducted in two rounds of voting so as to ensure that the elected President obtains an absolute majority of votes. All candidates take part in the first round of voting. If no candidate obtains an absolute majority in the first round, a second round runoff election between the two leading candidates is held two weeks later. The candidate who receives more votes in the second round is elected.

1.2.4 Poland is a newly democratized parliamentary republic. Candidates standing for presidential elections are nominated by voters. Potential candidates are required to collect signatures from at least 100 000 eligible voters for nomination. Similar to France, Poland adopts a two-round voting system for its presidential elections. If no candidate receives more than half of the votes cast in the first round, a second ballot will be held two weeks after. In the second round of voting, the voters choose between the top two candidates in the first ballot. The candidate who gets more votes in the second round is elected.

1.2.5 The US has a presidential system of government and its presidential primaries⁴ are considered as one of the most notable examples of primary elections. The whole process of presidential elections is quite complex on several fronts. While the *Constitution* sets out the age, citizenship and residency requirements for presidential candidacy, additional requirements are established by state laws and vary considerably among states. Not only can major political parties nominate candidates for the presidency, small party and independent candidates are also able to run for the presidency if they have collected a requisite number of supporting signatures. Moreover, the US operates an electoral system under which the President is elected by the Electoral College. A candidate must receive an absolute majority of electoral votes to be elected.

³ Semi-presidential system combines elements of presidential system with parliamentary system. Typically under a semi-presidential system, the head of state is the President who is directly elected by the people, whilst the head of government is the Prime Minister who is nominated by the President but can be dismissed by the legislature. The President under a semi-presidential system is more than a purely ceremonial figurehead. In general, the President and the Prime Minister will agree among themselves who will have the lead in particular policy areas. France is a notable example of semi-presidential democracy where the President directs foreign policy and the Prime Minister leads domestic policy.

⁴ Primaries are a means by which a political party selects its candidate for an upcoming election.

1.2.6 This study also covers Singapore although its President is largely a ceremonial head. The Singaporean presidential election is characterized by the establishment of a Presidential Elections Committee to ensure that presidential candidates have the qualifications set out in the *Constitution*. In order to be nominated, potential candidates have to obtain a Certificate of Eligibility issued by the Presidential Elections Committee. The certificate attests that the Committee is satisfied with the candidate's integrity, good character and reputation, as well as his or her experience and ability to carry out effectively the functions and duties of the President.⁵

1.3 Scope of research

1.3.1 This research examines the presidential election arrangements in France, Poland, the US and Singapore, with special reference to their nomination and voting procedures. It also gives a brief account of the relevant rules and restrictions on election campaign and finance and, by extension, the issue of level playing field between independent and party candidates.

1.4 Research method

1.4.1 This study adopts a desk research method, which involves literature review, documentation analysis, Internet research and correspondence with relevant authorities.

⁵ Potential candidates need a minimum of three years of work experience in holding certain key government positions or serving as the chairman of the board of directors or the chief executive officer of a large company.

Chapter 2 – France

2.1 Overview

2.1.1 France is a republic with a semi-presidential system of government, under which the executive power is shared between the President and the Prime Minister. The President possesses significant powers, especially in the fields of national security and foreign policy, while the Prime Minister⁶ leads domestic policy. The constitutional amendment in 1962 has made the President elected by direct universal suffrage.⁷ The President's term of office is five years, and he or she cannot serve more than two consecutive terms.

2.2 Legal framework

2.2.1 Presidential election in France is mainly regulated by the *1958 Constitution*, the *Electoral Code* and the *Act on the Election of the President of the Republic by Universal Suffrage*. In addition, there are various regulations, decrees and instructions to address specific areas of the electoral process, such as voter registration, voting abroad, registration of candidates and campaign finance.

2.2.2 Responsibility for a general oversight of the electoral process is vested with the Constitutional Council, which is composed of former Presidents and nine members⁸ appointed for nine-year non-renewable terms. The Constitutional Council reviews and advises on election-related legislation, and adjudicates election-related complaints and appeals.

⁶ The Prime Minister is appointed by the President, and this appointment is not subject to parliamentary confirmation. However, should the National Assembly (the lower house of Parliament) pass a resolution of no-confidence or fail to endorse a government programme or general policy statement, the Prime Minister must tender the resignation of the government to the President. Hence, the Prime Minister is usually chosen on the basis that he or she can garner majority support in the National Assembly.

⁷ The role of President first appeared in France in 1848 with the creation of the Second Republic. At that time, the President was elected by universal adult male suffrage. However, the *1875 Constitutional Acts* and the *1946 Constitution* decreed respectively that the President under the Third and Fourth Republics must be elected by the two houses of Parliament.

⁸ The incumbent President appoints three members (including the presiding member), while the Presidents of the Senate and the National Assembly each appoint three members.

2.3 Nomination procedures

2.3.1 The Constitutional Council is responsible for, among other things, assessing presidential candidates' eligibility and carrying out all relevant factual and legal checks. Apart from fulfilling the general eligibility criteria, potential candidates must be nominated by at least 500 eligible elected officials, in accordance with the regulations established by the Constitutional Council.

General eligibility of presidential candidates

2.3.2 A presidential candidate must be:

- (a) of French nationality;
- (b) at least 18 years of age;
- (c) on the electoral roll in his or her commune of residence⁹; and
- (d) in full possession of civic rights.

Sponsorship

2.3.3 Potential candidates must have public endorsement of at least 500 "sponsors" who are officials elected directly or indirectly by universal suffrage. These holders of public office can be categorized as: (a) Members of the National Assembly and Senators; (b) Members of the European Parliament; (c) councillors of regional and département¹⁰ legislatures; (d) mayors; and (e) presidents of governing authorities and assembly members of overseas territories. Around 47 000 offices confer the right to nominate candidate, which corresponds overall to around 42 000 elected officials.¹¹ Each elected official can only make one nomination regardless of the number of public offices he or she holds.

⁹ To vote, a person must: (a) hold French nationality; (b) be at least 18 years of age; (c) enjoy civil and political rights; and (d) appear on the electoral register. Eligible voters are automatically entered into electoral rolls at the level of commune, but those who change residence are required by law to register in their new place of residence.

¹⁰ The French Republic is made up of: (a) 22 regions subdivided into 96 administrative divisions ("départments"); (b) five overseas départements; and (c) seven overseas territories with a greater degree of autonomy than the five overseas départements.

¹¹ Some officials hold more than one office.

2.3.4 There is no upper limit on the number of sponsors a candidate may have. Nevertheless, a candidate must show broadly-based support by having sponsors coming from at least 30 of the 101 départements and seven overseas territories. Moreover, not more than 10% of the required sponsors, i.e. 50 sponsors, can come from a single département or overseas territory.

2.3.5 The "sponsorship" procedure is aimed at eliminating frivolous candidacies.¹² It was established in 1962 when presidential election by universal suffrage was first adopted. At that time, each candidate had to obtain the sponsorship of at least 100 elected officials. As the number of presidential candidates doubled from six in 1965 to 12 in 1974, the Constitutional Council reviewed the electoral system and accepted the need to prevent frivolous applications by proper "filtering". It thus increased the threshold to 500 sponsors in 1976.

2.3.6 Anonymity of the sponsors was also lifted in 1976 to ensure transparency of the sponsorship system. No later than eight days before the first round of voting, the Constitutional Council publishes a list of 500 names of sponsoring elected officials for each officially registered candidate. These 500 sponsors are chosen at random from the valid nomination forms received by the Constitutional Council. No elected official who has nominated a candidate may request that his or her name not be published.

2.3.7 The above reform helps regulate the number of candidates and ensure transparency of the sponsorship system. However, with the names of the sponsors made public, a political party may pressure its members to accord sponsorship only to the candidate(s) endorsed by the party. Those members not following the party line may risk being denied party funding and facing sanction from their voters.

2.3.8 Marine Le Pen from the far-right National Front submitted to the Council of State¹³ in November 2011 to challenge the constitutionality of the legal provision that mandates the publication of sponsors' names. She argued on the grounds that secrecy of political preferences needs to be protected, and that many local officials were members of more centrist parties and refused to support her candidacy due to the concern over the retaliation from the parties.

¹² See French Embassy in New Delhi (2012) and Constitutional Council (2013a).

¹³ The Council of State is the highest administrative jurisdiction in France.

2.3.9 The Council of State referred the matter to the Constitutional Council. The latter dismissed the case on 21 February 2012 and confirmed the constitutionality of the legal provision. It stated that the legal provision is in line with the *Constitution* as sponsorship cannot be regarded as an expression of the right to vote and the publication of the sponsors' names does not inhibit political diversity.¹⁴

Nomination process

2.3.10 Nomination begins with the publication of the writ of voters in the *Official Journal* to order the holding of an election and set out the election date. While there is no legal provision specifying the exact date, it is always around 20 February of the election year. After the announcement of the date of election, the Constitutional Council sends a nomination form and a return envelope to each elected official who is eligible to nominate presidential candidate. All elected officials are free to choose whether to make a nomination.

2.3.11 Sponsoring elected officials should send their duly completed nomination forms to the Constitutional Council no later than the sixth Friday before the vote. Alternatively, potential candidates may organize the collection of nomination forms and forward them to the Constitutional Council. In addition to the nomination forms, potential candidates are also required to provide a statement giving details of all their personal assets, so as to ensure greater financial transparency in political life.¹⁵

2.3.12 The Constitutional Council verifies the validity of the nomination forms received and informs each potential candidate of the number of valid nomination forms received by them. Such an arrangement allows potential candidates the time to get more sponsors if they have not obtained the requisite number of signed nominations before the deadline. After the deadline, the Constitutional Council will re-confirm that the persons nominated have given their consent to run for the presidency and acknowledge the filing of their asset declarations. It then draws up a list of candidates for the presidential election no later than 15 days before the first round of voting. The candidates' order in the list is determined by drawing lots. The official list of candidates is published in the *Official Journal*.

¹⁴ Notwithstanding losing the court case, Le Pen still managed to get the signed nominations from 500 elected officials and became one of the candidates in the 2012 presidential election. She finished third with 17.9% of the vote in the first round of voting.

¹⁵ A law on financial transparency in political life was promulgated in 1988 requiring all members of the government and holders of certain elective offices to make an asset declaration.

Number of presidential candidates

2.3.13 There is no specified limit imposed on the total number of candidates running for a presidential election. In practice, the theoretical maximum is around 80 candidates as each candidate is required to obtain at least 500 signed nominations from about 42 000 elected officials entitled to nominate candidate. Since 1981, the number of presidential candidates has remained relatively stable at around 10 except for the 2002 presidential election.¹⁶

Party candidates

2.3.14 Nomination is not made by political parties, and there is no restriction on the number of candidates that a political party may support. Indeed, there were cases in the previous presidential elections where candidates came from the same or affiliated political parties. Since France is using a two-round voting system under which only the two top candidates can advance to the second round of voting, political parties may have to consider whether it is tactically favourable to field more than one candidate.¹⁷ In particular, too many candidates with similar ideologies may risk splitting a party's vote and reduce the chance of any party candidate entering the second round of voting.

2.3.15 Against the above, the Socialist Party and its allied parties jointly held the 2011 French Socialist Party presidential primary to select their candidate for the 2012 presidential election. Unlike previous Socialist Party primaries, this was the first primary open to the general public.¹⁸ Six candidates competed in the first round of voting. Since no candidate won an absolute majority, the two candidates with the most votes contested a runoff election a week later. Almost 2.9 million voters participated in the second round of voting. François Hollande won 56.7% of the votes cast and became the official candidate of the Socialist Party and its allied parties. He said the broad victory gave him "legitimacy" to prepare for the 2012 presidential election.¹⁹

¹⁶ The number of candidates in the 2002 presidential election was 16. At that time, the left-wing parties failed to agree on a single candidate to stand for the election and several left-wing candidates declared their candidacy as a result.

¹⁷ For example, in 2002, more than five left-wing candidates contested the presidential election and split the votes of the left-leaning electorate. As a result, no left-wing candidate managed to enter the second round of voting.

¹⁸ In order to vote in the open primary, voters had to be (a) registered in the electoral rolls before 31 December 2010 or a member of the Socialist Party, Radical Party of the Left, Young Socialist Movement, or Young Radicals of the Left, or (b) members of the afore-mentioned parties if they were foreigners. Voters were required to pay a contribution of at least €1 (HK\$10.19), and to sign a charter pledging to the values of the Left: "freedom, equality, fraternity, secularism, justice, solidarity and progress".

¹⁹ See "Hollande Wins French Socialist Nomination to Challenge Sarkozy", *Bloomberg Businessweek*, 16 October 2011. Hollande was eventually elected in the 2012 presidential election.

Independent candidates

2.3.16 Under the public sponsorship system, it is not easy for independent candidates to get the signed nominations. In the recent three presidential elections, most of them were reportedly backed by political parties to stand for the election.²⁰ Only one candidate claimed himself as having no party affiliation, and was so reported by the press.²¹

Nomination for the 2012 presidential election

2.3.17 In practice, the main task for seeking nomination is to gather signatures from at least 500 elected officials for sponsorship. Although political parties do not involve in the nomination process, they still select a candidate to represent them. The move serves to muster their elected officials who are eligible to nominate to sign for the candidate they endorse, and to better mobilize their supporting voters to vote for this candidate. A common means to select party candidate is to hold a primary election.

2.3.18 While major parties such as the Socialist Party and the Union for a Popular Movement may have no difficulty in collecting signatures from elected officials, the same may not be true for the small parties and independent candidates. Many of the elected officials who are eligible to nominate presidential candidates are indeed members of major parties. Hence, major parties can easily mobilize them to sign for the party's nominee. In contrast, seeking requisite signatures seems to be the first hurdle for the small party and independent candidates to seek nomination. As seen in the 2012 presidential election, many small party and independent candidates had declared their intention to run for the presidency and had been campaigning for months. Only some of them got the requisite 500 nominations in the last few days before the deadline. There were other declared candidates withdrawing their candidacy or being unable to obtain 500 signed nominations required for standing the election. In the end, only 10 candidates were on the official list.

²⁰ The official list of candidates does not contain any information about candidates' party affiliation. In the 2007 presidential election, independent candidate Gérard Schivardi was reported to represent the Workers' Party. Similarly, Jacques Cheminade was considered as an independent candidate to stand for the 2012 presidential election by some press reports, but as a Solidarity and Progress candidate by others.

²¹ This candidate was José Bové, an alter-globalization activist. In the 2007 presidential election, he obtained 1.32% of the popular vote in the first round of voting to rank 10th among the 12 candidates.

2.4 Voting procedures

2.4.1 Voting is voluntary in France. Instead of showing a list of candidates, the ballot papers are in the form that each candidate's name is printed on a separate ballot. Voters choose from an assortment of ballot papers and place the ballot paper of their chosen candidate into an envelope when casting their vote. After the poll, the polling station staff will open the envelopes for vote counting. Envelopes with no or more than one ballot paper are considered void.

2.4.2 France adopts a two-round system of voting. In the first round of voting, a candidate is elected if he or she obtains an absolute majority of all the votes cast, i.e. half of all votes cast plus one. However, this has never happened before under the Fifth Republic. If no candidate obtains an absolute majority in the first round of voting, a second round is held two weeks later between the two candidates in the lead at the end of the first round. The candidate who receives the greatest number of votes, i.e. a simple majority, is elected.²²

2.5 Election campaign and finance

Election campaign

2.5.1 The official campaign period commences two weeks before polling day and ends at midnight Friday before the Sunday election. If a second ballot is necessary, the campaign re-opens the next day for a week. Election campaigns are supervised by the National Commission for Control of the Electoral Campaign ("CNCCEP"),²³ which ensures equal treatment of candidates by the government and regularity of the campaign.

2.5.2 Broadcast media, both public and private, are subject to strict and detailed regulations for campaign coverage. In general, candidates should be granted equitable and equal coverage in terms of airtime and direct speech on all broadcasters. In addition, each candidate is entitled to broadcast free spots on public television during the official campaign period. Print media are not subject to regulation, except for being subject to the prohibition on paid political advertisement that extends to all media during the six months prior to an election.

²² Since there are only two candidates in the second round of voting, a simple majority would still be a share of more than 50% of the vote.

²³ CNCCEP is a temporary body that consists of five members and is led by the Vice-President of the Council of State. Since 1965, CNCCEP has been reactivated before the launch of the official campaign period for each presidential election.

Campaign finance

2.5.3 A candidate can finance his or her election campaign by self-financing (such as personal funds and loans), donations from political parties, and/or donations from natural persons with a ceiling of €4,600 (HK\$46,874). Candidates are prohibited from accepting donations from legal persons and contributions or in-kind support by foreign states or foreign political parties.

2.5.4 Candidates are entitled to government subsidies once they have got nominated. Each candidate is basically entitled to reimbursement amounting to 4.75% of the allowable ceiling for their election campaigns (see paragraph 2.5.5). For candidates obtaining 5% or more of the votes cast in the first ballot, the amount of reimbursement will be raised to 47.5% of the allowable ceilings. The state pays €153,000 (HK\$1.56 million) in advance to the candidates when the official list of candidates is published in the *Official Journal*.

2.5.5 There are statutory ceilings on campaign expenses. The spending limit for the 2012 presidential election was set at €16.85 million (HK\$171.7 million) for each candidate in the first round. As there were 46 066 307 registered voters at the time of the 2012 presidential election, the spending limit was €0.37 (HK\$3.77) per registered voter. For the two candidates contesting in the second round, the limit was €22.51 million (HK\$229.38 million) or €0.49 (HK\$4.99) per registered voter.

2.5.6 Campaign accounts must be submitted to the National Commission on Campaign Accounts and Political Party Financing²⁴ in two months following a decisive round of the election. Exceeding the ceiling on campaign expenses will result in the rejection of the campaign account by the Commission, and the candidate concerned will lose the right to reimbursement of his or her campaign expenses and may face more serious penalties.^{25 26}

²⁴ The Commission is composed of nine non-partisan members: three from the Council of State, three from the Court of Cassation (the highest court in the French judiciary) and three from the Court of Audit (an administrative court handling public accounts).

²⁵ Failure to comply with the campaign expense rule may result in criminal penalties, including a fine and imprisonment of up to one year.

²⁶ On 4 July 2013, the Constitutional Council ruled that Nicolas Sarkozy exceeded the spending limits during the election campaign. Sarkozy was one of the two candidates contested in the second round of voting in the 2012 presidential election. In addition to forfeiting some €11 million (HK\$112.09 million) reimbursement, Sarkozy was ordered to refund the flat-rate advance of €153,000 (HK\$1.56 million) and pay a fine of €363,615 (HK\$3.71 million) to the Public Revenue.

Chapter 3 – Poland

3.1 Overview

3.1.1 Poland is a newly democratized parliamentary republic. During its democratic transformation in the early 1990s, Poland's political system featured a semi-presidential system with a strong president. The subsequent promulgation of the *Constitution of 1997* gives more executive power to the Prime Minister²⁷ and the Cabinet. While the President still wields significant influence, particularly on areas relating to national defence and foreign policy, the Prime Minister leads most government policy.

3.1.2 According to the agreement signed after the Round Table Talks²⁸ in early 1989, the President was to be elected by the Parliament for a term of six years. Amid the rapid political changes in other communist states in mid-1990, pressure mounted in Poland for the termination of the power-sharing arrangements as agreed in the Round Table Talks. In October 1990, the *Constitution* was amended to have the President elected by universal suffrage for a term of five years. The term of office has remained unchanged since then and the President can be re-elected only once.

3.2 Legal framework

3.2.1 The basic principles related to presidential elections are set forth in the *Constitution of 1997*. The specific procedure and rules governing the nomination of candidates and implementation of presidential elections are provided in the *Presidential Election Law of 1990*. In addition, a new *Electoral Code* consolidating election-related legislation was adopted in January 2011.

3.2.2 The National Electoral Commission is the supreme electoral body in Poland.²⁹ Its powers include the organization and supervision of other electoral commissions, registration of presidential candidates and proclamation of the election results.

²⁷ The Prime Minister is appointed by the President. This appointment is subject to confirmation by the Sejm (the lower house of Poland's legislature) in the form of a vote of confidence.

²⁸ The Round Table Talks was an attempt by the then communist government to initiate discussion with the trade union Solidarity and other opposition groups so as to defuse growing social unrest in Poland.

²⁹ The National Electoral Commission comprises nine judges: three from the Constitutional Tribunal, three from the Supreme Court and three from the Supreme Administrative Court.

3.3 Nomination procedures

3.3.1 A salient feature of the Polish presidential electoral system is the nomination of candidates by citizens who have the right to vote in elections of the Sejm (the lower House of Parliament)³⁰, i.e. nomination is on individual basis.

General eligibility of presidential candidates

3.3.2 In order to be registered as a candidate in the presidential election, a person must:

- (a) be a Polish citizen;
- (b) be at least 35 years of age on the day of the first round of the election; and
- (c) collect signatures of at least 100 000 voters³¹ who hold the right to vote in elections of the Sejm.

Nomination process

3.3.3 According to the *Constitution*, presidential election shall be ordered by the Speaker of the Sejm no sooner than seven months and no later than six months before the expiry of the serving President's term. In addition, the date of election shall be fixed no sooner than 100 days and no later than 75 days before the expiry of the serving President's term. However, if the presidency is vacant, the election is ordered within 14 days from the occurrence of such vacancy, and polling day has to fall within 60 days from the announcement of election.

3.3.4 The nominations of party-affiliated and independent presidential candidates require the formation of an election committee. According to the *Presidential Election Law*, at least 15 citizens with the right to vote shall form an election committee to nominate a candidate for the presidency and conduct election campaign for such candidate on an exclusive basis.

³⁰ According to the *Constitution*, every citizen shall be eligible to vote in elections to the Sejm if he or she: (a) has attained the age of 21 years no later than on the day of the election; and (b) is not sentenced to imprisonment by a final judgment for an intentional indictable offence. Eligible voters with permanent residence in the area of the municipality are automatically entered into the register of voters.

³¹ For reference, there were about 31 million registered voters at the time of the 2010 presidential election.

3.3.5 Each election committee has to appoint from among its members (a) a legal representative to act for and on behalf of the committee, and (b) a financial representative to manage the financial matters. The legal representative will inform the National Electoral Commission of the establishment of the election committee through the submission of a notice of establishment.³² The Commission will accept the notice of establishment within three days from the date of filing if the election committee is established in accordance with the relevant rules.

3.3.6 The legal representative of the election committee has to collect signatures of at least 1 000 citizens who support the potential candidate³³ and submit these signatures to the National Electoral Commission for the registration of the election committee. The registration should be completed no later than 55 days before polling day. If the election committee meets all the requirements, the Commission will register the committee within three days and announce in the *Official Gazette*.

3.3.7 After the registration, the election committee should gather all the required 100 000 signatures as part of the nomination process. Its legal representative should submit the signatures gathered to the National Electoral Commission personally no later than noon on the 45th day before polling day. The nomination is also required to provide: (a) the name, age and place of residence of the nominated candidate, and his or her political party affiliation; (b) the name of the election committee, and name and address of its legal and financial representatives; and (c) a list of citizens who support the nomination.³⁴ There is no prescribed upper limit for the number of signatures gathered.³⁵

3.3.8 The National Electoral Commission examines whether each nomination submitted has conformed to the following rules: (a) the candidate has met all the requirements; (b) the data contained in the nomination tally with those in the official documents; and (c) the submitted nomination has been supported by at least 100 000 citizens.

³² The notice of establishment is required to provide the name, address and identity card number of citizens forming the election committee.

³³ These 1 000 signatures are counted as part of the required 100 000 supporting signatures of citizens as mentioned in (c) of paragraph 3.3.2.

³⁴ According to the *Presidential Election Law*, the list should include legibly written name, place of residence and identity card number of the citizens, with their personal signatures. Each page of the list has to include the name of the election committee, together with the required annotation. However, the law makes no mention of whether the National Electoral Commission would publish the list.

³⁵ From the press reports covering the 2010 presidential election, the number of signatures that candidates claimed they had submitted varied considerably. For example, a candidate from a major party claimed to obtain 1.65 million signatures, and another candidate only submitted 191 730 signatures to the National Electoral Commission for nomination.

3.3.9 The National Electoral Commission registers the candidate if his or her nomination is made in accordance with the relevant rules. It then prepares a list of candidates in alphabetical order together with the candidates' personal data. The Commission makes public the official list of candidates no later than 20 days before polling day.

Number of presidential candidates

3.3.10 The electoral law does not set out any specified limit for the total number of presidential candidates. All qualified candidates can run for the presidency. Except for the first presidential election in 1990 with six competing candidates, the number of candidates has been around 12 in the ensuing four elections.

Party candidates

3.3.11 Although nomination is not made by political parties, political parties do play a significant role in the presidential elections. For example, election committees may request the National Electoral Commission to add the names of the candidates' affiliated political or social organizations on the official list of candidates. Political parties are also allowed to provide funding for the election campaigns of presidential candidates. Furthermore, there are no legal restrictions on the number of presidential candidates that a political party may support. This notwithstanding, no political party has supported more than one presidential candidate in the previous presidential elections.

Independent candidates

3.3.12 In Poland, independent candidates could sometimes pose serious challenges to major party candidates.³⁶ There was a record high number of independent candidates in the 1995 presidential election. Six independent candidates competed in the election, constituting half of the total number of contesting candidates.

³⁶ In the 1990 presidential election, Stan Tyimiński ran as an independent candidate. He challenged the two most promising candidates, Solidarity leader Lech Wałęsa and Prime Minister Tadeusz Mazowiecki. Tyimiński obtained 23.1% of the vote, outcompeting Mazowiecki and trailing behind Wałęsa. In the second round of voting, Tyimiński only gained 25.75% of the vote and lost to Wałęsa for the presidency.

3.3.13 However, the number of independent candidates has decreased in the ensuing presidential elections with the gradual development of party system in Poland. There were only three independent candidates in the 2000 presidential election, and the number reduced to one in both 2005 and 2010 presidential elections.

Nomination for the 2010 presidential election

3.3.14 In the 2010 presidential election, political parties had begun to prepare for the election long before the official campaign period started. At that time, the incumbent Prime Minister Donald Tusk, also the leader of the centre-right Civic Platform ("PO"), was the most promising candidate of his party. However, Tusk announced in January 2010 that he had decided not to take part in the upcoming presidential election. The announcement triggered a competition for the party's nomination and a primary election was held to select the candidate. It was the first time for a Polish party to choose its candidate by primary election. Two candidates took part in the primary. Bronislaw Komorowski won 69% of the approximately 21 000 votes cast by party members and became the official PO candidate for the presidential election.

3.3.15 The sudden death of President Lech Kaczyński in a plane crash on 10 April 2010³⁷ brought forward the 2010 presidential election several months before the official end of his mandate. In accordance with the *Constitution*, the Speaker of the Sejm announced that the first round of the election would be held on 20 June 2010, about three months before the previously planned date for the election.

3.3.16 The plane crash accident caught many political parties unattended. In particular, two potential presidential candidates died in the accident. One of them was incumbent President Kaczyński who was originally the planned nominee of the Law and Justice Party ("PiS").³⁸ The party, therefore, had to adjust its strategies accordingly and identify another candidate. The late President's brother and former Prime Minister Jaroslaw Kaczyński, also the co-founder of PiS, announced his candidacy shortly after the official commemorations of the President's death had been completed.

³⁷ On 10 April 2010, Lech Kaczyński was travelling with a large delegation on board an official aeroplane to attend a ceremony. The plane crashed in the proximity of the Smolensk North airport in Russia. None of the 96 passengers aboard survived. Among the victims were many other public figures, high-ranking civil servants, army commanders as well as Members of Parliament.

³⁸ Lech Kaczyński had yet to accept the nomination, but it was widely believed that he would do so. Another potential candidate for the presidential election, Jerzy Szmajdziński from the Democratic Left Alliance, also died in the plane crash.

3.3.17 Since the 2010 presidential election was held in view of a vacancy of the office, potential candidates just had five days to collect the initial 1 000 signatures and only 15 days in total to gather all the required 100 000 signatures. This compared with one to three months allowed under normal circumstances. A total of 23 election committees applied to register with the National Electoral Commission. The Commission accepted 17 applications based on the terms and conditions stipulated by the relevant electoral law. In the end, only 10 candidates managed to collect the required 100 000 signatures to run for the election. The number was less than the average of 12 candidates seen in the previous elections.

3.4 Voting procedures

3.4.1 Voting is voluntary in Poland. The ballot paper contains a list of candidates. Voters cast their vote by putting an "x" mark on the box printed on the left of the candidate's name.

3.4.2 Similar to France, Poland also adopts a two-round system for presidential elections. A candidate obtaining more than half of the votes cast in the first round of voting will be elected. This has happened once in the 2000 presidential election.³⁹ If no candidate can get an absolute majority in the first round, a second ballot will be held 14 days after. In the second round, the voters elect one from the two candidates receiving the highest number of votes in the first round. The candidate who receives a simple majority is elected.

3.5 Election campaign and finance

Election campaign

3.5.1 The election campaign starts from the date when the Speaker of the Sejm ordered the election and ends 24 hours before polling day. It is prohibited to campaign on polling day and 24 hours before polling day, including convening meetings, organizing marches and demonstrations, giving speeches and distributing materials.

³⁹ Incumbent President Aleksander Kwasniewski won the 2000 presidential election with 53.9% of the vote in the first round.

3.5.2 After the announcement of the election, the National Electoral Commission will monitor the events associated with the election campaigns. Election committees should conduct their election campaigns in strict adherence to the provisions of the *Electoral Code*. Within 15 days before the election until 24 hours before polling day, election committees have the right to disseminate, free of charge, broadcasts in the programmes of state radio and television broadcasters. Each election committee is allocated equal amount of time, and the duration of which depends on the number of participating election committees.

Campaign finance

3.5.3 Candidates may not raise funds before the notice of establishment of the election committee is accepted by the National Electoral Commission and after polling day. An election committee for presidential candidate can raise funds from individual contributions by Polish citizens, bank loans and election fund of the political party supporting the candidate. The sum of contributions from a Polish citizen for an election committee cannot exceed 15 times the minimum wage⁴⁰ in force on the day preceding the date of announcement of election.

3.5.4 No government subsidy is provided to the presidential candidates. Expenses of election committees shall be covered by their own means.

3.5.5 Expenditures of election committees are subject to strict limits. During the 2010 presidential election, this limit was set at PLN 15,552,123 (€3.69 million or HK\$37.6 million). As there were 30 833 924 registered voters at the time of the 2010 presidential election, the spending limit was €0.12 (HK\$1.22) per registered voter.

3.5.6 All election committees should within three months from polling day submit to the National Electoral Commission their financial statements containing the income, expenditures and financial obligations incurred by the committees. Audits are carried out after the Commission receives the financial statements. Within six months from receiving the financial statements, the National Electoral Commission shall take the decision whether to acknowledge or reject such statements.

⁴⁰ The minimum wage in Poland was PLN 1,317 (€312) per month in 2010, which was approximately HK\$3,179. The limit for contribution was thus about €4,680 (HK\$47,689).

Chapter 4 – The United States

4.1 Overview

4.1.1 The United States ("the US") is a federal republic comprising 50 states, the District of Columbia, and a number of overseas territories. Its *Constitution* was adopted in March 1789 and last amended in May 1992. Under Article II of the *Constitution*, the President is elected for a fixed term of four years. The 22nd Amendment, ratified in 1951, prohibits anyone from being elected President more than twice.⁴¹

4.2 Legal framework

4.2.1 Consistent with the federal system, the legal framework for elections is decentralized and complex. Federal legislation only sets out the framework for elections, while the implementation of the electoral process is regulated by state laws. Court decisions at various levels also form an integral part of the legal framework.

4.2.2 There is no federal body mandated to oversee the entire electoral process. Elections are administered at the state level, resulting in a wide variety of practices.

4.3 Nomination procedures

4.3.1 Presidential election takes place every four years. Prior to the general election, primaries or caucuses⁴² usually begin in January of the election year and conclude in June, followed by the national party convention in July to August. The general election takes place on the Tuesday after the first Monday of November.

⁴¹ If a President comes to office between elections and serves more than half of the term to which his or her predecessor was elected, his or her years in office are counted as his or her first term. If he or she serves less than half of the predecessor's term, he or she would be eligible for election to two full terms in his or her own right.

⁴² Caucuses are another means for a political party to select its candidate for an upcoming election. They are a state-wide series of meetings that last for an hour or two of an evening.

General eligibility of presidential candidates

4.3.2 General candidacy requirements are set out in the *Constitution*. To be eligible for the presidency, a person must:

- (a) be a natural born citizen of the US;
- (b) be at least 35 years of age; and
- (c) have been resident in the US for at least 14 years.

Ballot access

4.3.3 Potential candidates also need to satisfy the state statutory requirements for ballot access.⁴³ Ballot access requirements vary from state to state. Generally speaking, candidates can obtain ballot access either through a political party or by filing a petition with public support.⁴⁴

Nomination by political parties

4.3.4 States allow political parties to nominate candidates if the parties meet certain criteria, such as winning a requisite percentage of votes cast at a recent election for a particular office.⁴⁵ The nominees are decided by the parties either through primary election or party convention.

4.3.5 Some states may have "sore loser" statutes, under which candidates who have lost in primary election are prohibited from running in the general election as an independent candidate or otherwise. In practice, with the exception of Michigan, no minor party presidential candidate has ever been kept off any state's general election ballot on such grounds. In 2012, Michigan kept Gary Johnson⁴⁶ off the ballot in 2012 as his name had appeared on a major party presidential primary ballot before.⁴⁷

⁴³ The term "ballot access", instead of "nomination", is more commonly used in the US. In the US, voters do not directly vote for the President, but for the "electors" who pledged to vote for a particular presidential candidate. These electors have their committed presidential candidate's name appear on the ballot.

⁴⁴ Most states also permit a presidential candidate to be a "write-in candidate", which means voters may write-in the name of any person not included on the ballot. Many of these states require the write-in candidate to file a notice prior to the election.

⁴⁵ The threshold differs considerably among states, ranging from 1% to 20%.

⁴⁶ Gary Johnson had run in eight Republican primaries but won none. He later withdrew his candidacy for the Republican nomination and sought the Libertarian Party nomination instead. He received the official nomination of the Libertarian Party in May 2012. Being the third largest party in the US, the Libertarian Party managed to have Johnson appear on the ballot in the whole nation except Oklahoma and Michigan. Due to Oklahoma's stringent ballot access laws, the Libertarian Party was not allowed to nominate presidential candidate in 2012.

⁴⁷ On 1 May 2013, the Sixth Circuit ruled that the Michigan Secretary of State did not violate Michigan's electoral law for keeping Gary Johnson off the ballot of the general election in November 2012 on the grounds that his name had appeared on the January 2012 Republican presidential primary ballot.

Nomination by petition

4.3.6 All states set out procedure allowing (a) candidates from small political organizations which are not eligible to nominate candidates and (b) independent candidates to obtain ballot access by public support. Such a procedure is known as nomination by "petition", under which potential candidates are required to collect a requisite number of supporting signatures to file the petition. A summary of petition requirements for independent candidates in each state is provided in **Appendix I**.

Nomination process*Nomination by political parties*

4.3.7 A presidential primary has two functions: first to show the popularity of a candidate amongst voters; and second to choose delegates who are committed to voting for a specific candidate at the party's national convention. In some states, a caucus may be held instead of a primary. The date of presidential primaries varies from state to state. Iowa and New Hampshire are the states which usually hold the first caucus and primary election respectively, and candidates who win in these two states garner early media attention.

4.3.8 Each state is free to decide whether to hold a closed or an open primary election. Most states choose the closed primary election. In addition, the primary can be a "winner-take-all primary", under which the candidate who wins the primary in a particular state will get all the delegates in that state. This type of primary is mostly used by the Republican Party. Alternatively, the primary can be a "proportional primary" under which delegates are awarded in proportion to the votes that each candidate wins in the primary. All Democratic Party primaries are of this type.

4.3.9 Under the caucus system, election of delegates occurs in stages. In the first stage, party members meet in local voting districts known as precincts. They elect their own delegates for the county conventions, where delegates from precincts elect county delegates to state conventions. At the state conventions, county delegates elect state delegates to represent the state at the national nominating convention.

4.3.10 Each party, both major and minor ones, holds its own national nominating convention, which meets for three to four days in a large city during July and August of the election year. At the convention, delegates vote for the person they want their party to nominate for the presidency. The candidate who has received the majority vote becomes the party's presidential candidate. The national party platform is also approved in the national nominating convention.

Nomination by petition

4.3.11 Independent candidates and candidates from small political organizations which are not eligible to nominate candidates should collect a number of supporting signatures to file a petition. The minimum number of supporting signatures required is commonly specified as a fixed percentage of the state's registered voters, a fixed percentage of the voters who participated in a specified recent election, or a fixed number of signatures. There is no bright-line rule for constitutional signature requirements, but statutes which require petitions signed by 1% of the locality's electorate have been accepted by the courts.⁴⁸ Some states also require that a certain number of signatures should be obtained from various administrative divisions.

Number of presidential candidates

4.3.12 No statutes have set a limit on the total number of candidates appearing on the ballots. As restricted by the state ballot access law, some candidates may be able to appear on the ballots in some but not all of the 50 states. In the 2008 and 2012 presidential elections, there were 24 and 32 candidates appearing on the ballots in one or more than one state respectively.

Party candidates

4.3.13 No statutes have specifically restricted the number of candidates that a political party can nominate for a presidential election. However, political parties usually select only one candidate.⁴⁹

⁴⁸ See College of William and Mary School of Law & National Center for State Courts (2008).

⁴⁹ Some minor parties even resort to "electoral fusion", under which they only nominate candidates who have already been nominated by the major parties.

Independent candidates

4.3.14 In the previous presidential elections, there have been cases where candidates whose names appeared on the ballot in major party presidential primaries later run as third party⁵⁰ or independent candidates for the general elections. Although some third party and independent candidates have in the past posed serious challenges to other candidates,⁵¹ very few of them had a practical likelihood of winning the US presidency.⁵² As the elected President requires an absolute majority in the Electoral College, i.e. at least 270 electoral votes, it is difficult for third party and independent candidates to appear on the ballot in all 50 states amid the burdensome requirements for them to gain ballot access in some states.⁵³ There were 24 and 32 presidential candidates running for the 2008 and 2012 presidential elections respectively. On both elections, only four candidates (including two major party candidates) had attained ballot access in a sufficient number of states to be potentially elected.

Nomination for the 2012 presidential election

4.3.15 The 2012 presidential election began with the selection of party candidates in nationwide state-level primaries and caucuses that started in January 2012. Being the incumbent Democratic Party leader, President Barack Obama's nomination was largely not contested. On the other hand, Mitt Romney had to face a bitter contest for the Republican nomination. The primary elections of the Republican Party took place from 3 January to 14 July 2012. To become the Republican Party's nominee, a potential candidate needed the support of 1 144 delegates and plurality in five state delegations. Most of the potential candidates started their campaigns in the summer of 2011, but after the first two primary elections in Iowa and New Hampshire, only four campaigns including Romney's remained. Romney would reach the nominating threshold of 1 144 delegates by most projected counts following his primary win in Texas in late May. In the end, he won the Republican nomination at the Republican National Convention on 28 August 2012.

⁵⁰ The term "third party" is used for all political parties in the US other than the two major parties, i.e. the Republican Party and the Democratic Party.

⁵¹ A recent example is Ralph Nader. He is a five-time presidential candidate, first running as a write-in candidate in the 1992 election. In the 2000 presidential election in Florida, George W. Bush defeated Al Gore by 537 votes. There were claims that he was responsible for Gore's defeat. Nader received 97 421 votes at that election, from which a slight decrease in favour of Gore would have altered the outcome.

⁵² No third party or independent candidate has ever been elected President.

⁵³ For example, some states grant ballot access to third party and independent candidates if these candidates collect a requisite number of signatures amounting to 3% of votes cast in the past election.

4.4 Voting procedures

4.4.1 Voting is voluntary in the US.⁵⁴ The President is elected indirectly by the Electoral College. Each of the 50 state is allocated a number of electoral votes equal to its total number of Senators and Representatives, and the District of Columbia has three electoral votes. Since 1961, the Electoral College has had 538 votes. Election to the presidency requires winning at least 270 of the 538 electoral votes, i.e. an absolutely majority. If no candidate gains an absolute majority, the result is decided by the House of Representatives, with all Representatives of a state voting as a unit, i.e. each state has one vote. The winner would also require an absolute majority, i.e. at least 26 of the 50 votes. If no candidate is elected on the first ballot, balloting would continue until one candidate emerges as the winner. Election by the House of Representatives occurred twice, one in 1800 and the other in 1824.

4.4.2 In practice, political parties name a list of electors after they have selected their presidential candidate. The number of electors on the list is equal to the number of electoral votes that a state has. Independent candidates also name their electors when they file their petition for nomination.

4.4.3 At the general election, citizens vote within each state for a list of electors. Since the electors are bound by their pledges, voters are actually making their choice among the presidential candidates. In many states, names of the electors do not even appear on the ballot paper. The voters only see the names of the presidential candidates. Under the "winner-take-all" system adopted by all but two states⁵⁵, the list which wins the most popular votes in a state will take all elector votes of that state, regardless of the margin of victory.

4.4.4 After the general election, the electors meet in their respective states in December to cast their votes for the President. As the electors are bound by their pledges, the vote is a mere formality to ratify the outcome of the general election.⁵⁶ Each state's electoral votes are counted in a joint session of Congress. The Vice President, as President of the Senate, presides over the count and announces the results of the vote.

⁵⁴ US citizens who are at least 18 years of age on election day and are residents of a state are eligible to vote in general elections. A voter must self-register to be eligible to vote, but the voter registration process varies somewhat from one state to another.

⁵⁵ The two exceptional states are Nebraska and Maine where the proportional allocation of votes is adopted.

⁵⁶ While the electors are pledged to vote for their party's candidate, there is no provision in the *Constitution* requiring them to do so. In the past, there were cases where an elector did not vote for his or her party's candidate. However, such "faithless" votes have not changed the outcome of any presidential election to date. Some states have passed laws to prohibit electors from casting such votes. Penalties may include fines, replacement of the elector, or criminal prosecution. Even though there have been cases of electors voting contrary to their pledge, no elector has ever been penalized.

4.4.5 The current voting system may lead to a situation where the elected President has fewer popular votes nationwide than his or her opponent. State winner-take-all statutes have permitted candidates to win the presidency without winning the most popular votes nationwide in four of the past 57 presidential elections. The most recent case was the presidency of George W. Bush in 2000.⁵⁷ Against this, some consider the Electoral College system as an outmoded relic. However, there are others who opt for the system as it requires presidential candidates to contest the election in many states, rather than just in the most populous ones.⁵⁸

4.4.6 To rectify the problem, several states have recently passed a National Popular Vote ("NPV") law whereby they would pool their electoral votes in favour of the candidate who wins the national popular vote. Under the NPV law, there will be a popular election in each member state, in which voters are presented with a choice among "presidential slates" containing the names of presidential and vice-presidential nominees. Prior to the meeting of the electors, the chief election official of each member state shall add the number of votes obtained by each presidential slate in the whole nation to produce a "national popular vote total". The slate with the largest national popular vote total will be designated as the "national popular vote winner". Electors will then be nominated to vote for the national popular vote winner in the Electoral College. As such, NPV would guarantee the candidate who receives the most popular votes in the entire nation get the presidency.

4.4.7 According to the agreement among the states passing the NPV law, the law would take effect only when NPV bill is enacted, in identical form, by states possessing a majority of the electoral votes to elect a President (i.e. 270 of 538 electoral votes). As at September 2013, NPV law has been enacted by nine states and the District of Columbia, which together account for 136 or 50.4% of the 270 electoral votes needed to activate the law.⁵⁹

⁵⁷ George W. Bush won the 2000 election despite polling some half a million votes fewer than Al Gore.

⁵⁸ See Department of State (2012a) *USA Elections in Brief*, p.25.

⁵⁹ See *National Popular Vote* (2013).

4.5 Election campaign and finance

Election campaign

4.5.1 In the US, election campaign begins when a candidate formally announces candidacy. The campaign environment has been highly polarized and usually focused on the candidates of the Democratic and Republican parties.⁶⁰

4.5.2 The restrictions imposed on the media for election coverage are very limited in line with the protection of freedom of speech as afforded by the First Amendment to the *Constitution*. Print media are not bound by any statutory requirements. There are also no requirements for equal and balanced news coverage. However, in the 60 days prior to the general elections, commercial broadcasters are obliged to provide "reasonable access" to all candidates competing for federal office (including the presidency). This equal opportunity rule ensures that if a broadcaster grants airtime to one candidate, it must allow equal conditions for other candidates in that contest. Paid airtime is also subject to the equal opportunity rule.

Campaign finance

4.5.3 Campaign finance for general elections is regulated by federal law under the supervision of the Federal Election Committee. A defining element of the US campaign finance system has been transparency, safeguarded by frequent and detailed campaign finance disclosure by candidates.

4.5.4 Campaign finance contributions are subject to a range of limitations. Foreign and anonymous donations are prohibited. In addition, corporations and unions cannot make direct contributions to political parties and federal candidates, but they can make contributions through a political action committee.⁶¹

⁶⁰ See Office for Democratic Institutions and Human Rights (2008) *United States of America General Elections 4 November 2008 OSCE/ODIHR Limited Election Observation Mission Final Report*.

⁶¹ In 2010, a controversial Supreme Court ruling drastically changed campaign finance law. Before the ruling, corporations and labour unions were prohibited from spending directly to support or oppose candidates for President and Congress, but groups of individuals were allowed to establish separate segregated funds in so-called "political action committees" to make contributions to political parties or candidates' campaigns. After the ruling, corporations and unions can directly spend unlimited amount of money explicitly advocate for or against the election of a candidate, as long as they do not do so in coordination with the candidates' campaign organization.

4.5.5 Since 1976, presidential candidates have been eligible to participate in a public funding system.⁶² Simply put, qualified presidential candidates receive federal government funds to pay for the valid expenses of their campaigns in both the primary and general elections. National political parties also receive federal money for their national nominating conventions. To be eligible for public financing, presidential candidates should be subject to several limitations, particularly regarding their campaign expenditure. However, as major candidates can often easily raise a large amount of fund from private sources, many of them have opted out of public funding.

4.5.6 There are no limits on campaign spending as the Supreme Court has held that any limitation would constrain the right to free speech. Consequently, US elections have been characterized by a high level of campaign spending.

⁶² For details of the public funding system, please refer to the *Public Funding of Presidential Elections Brochure* (<http://www.fec.gov/pages/brochures/pubfund.shtml>).

Chapter 5 – Singapore

5.1 Overview

5.1.1 In Singapore, the President is elected for a term of six years and there are no term limits to his or her presidency. Prior to 1991, the President was appointed by Parliament and performed a largely ceremonial role. The *Constitution* was amended in 1991 to provide for an elected presidency. The amendment also grants the President the executive powers such as the right to veto senior civil service appointments and government expenditures drawing on the national reserves.

5.2 Legal framework

5.2.1 The basic principles governing the presidential elections are set forth in the *Constitution*, while the procedure for elections is laid out in the *Presidential Elections Act*. The electoral process begins with the issue of a writ of election by the Prime Minister to the returning officer specifying the date and venue of nomination day. If there is only one candidate nominated, no poll will be held and this candidate is declared to have been elected.⁶³

5.2.2 Management of elections is undertaken by the Singapore Elections Department. It is responsible for planning and managing the conduct of presidential and parliamentary elections and of any national referendum in Singapore. The department has also the Registry of Political Donations under its purview.

⁶³ This occurred at both the 1999 and 2005 presidential elections, in which S. R. Nathan was deemed elected because he was the only eligible candidate.

5.3 Nomination procedures

5.3.1 Potential candidates for the presidency have to fulfil the qualifications set out in the *Constitution*. The Presidential Elections Committee ("PEC") is formed under Article 18 of the *Constitution*, with the mandate to ensure that the presidential candidates meet the prescribed qualifications. Before officially nominated as candidates for the election, potential candidates are required to obtain a "Certificate of Eligibility" issued by PEC.

General eligibility of presidential candidates

5.3.2 Pursuant to Article 19 of the *Constitution*, a presidential candidate must:

- (a) be a citizen of Singapore;
- (b) be not less than 45 years of age;
- (c) have his or her name appeared in a current register of voters⁶⁴ and be resident in Singapore at the date of nomination and has been so resident for periods amounting in the aggregate of not less than 10 years prior to that date;
- (d) not be subject to any disqualifications applicable to membership of Parliament;
- (e) satisfy PEC that he or she is a person of integrity, good character and reputation;
- (f) not be a member of any political party on the date of his or her nomination for election; and
- (g) have not less than three years of experience as senior official of a Singapore government agency⁶⁵, or chairman or chief executive officer of a large Singapore company.⁶⁶

⁶⁴ To register as a voter in Singapore, one must be (a) a citizen of Singapore; (b) an ordinarily resident in Singapore; and (c) not less than 21 years of age.

⁶⁵ Offices include Minister, Chief Justice, Speaker of Parliament, Attorney-General, Chairman of the Public Service Commission, Auditor-General, Accountant-General or Permanent Secretary, and chairman or chief executive officer of a statutory board. See Article 19(2)(g)(i) and (ii) of the *Constitution*.

⁶⁶ He or she should be (a) a chairman of the board of directors or a chief executive officer of a company incorporated or registered under the *Companies Act* with a paid-up capital of at least S\$100 million (HK\$624 million); or (b) in any other similar or comparable position of seniority and responsibility in any other organization of equivalent size or complexity. See Article 19(2)(g)(iii) and (iv) of the *Constitution*.

Nomination process

5.3.3 Any person who desires to run for the presidency shall apply to PEC for a Certificate of Eligibility starting from three months before the incumbent President's term expires, but not later than three days after the date of the writ of election. The President's term normally expires in September. While the timing for the issue of the writ is not specified in the law, it is usually in early August. As such, potential candidates would generally have about two months to apply for a Certificate of Eligibility.

5.3.4 To demonstrate their character and reputation, potential candidates must submit references from three persons who are not their immediate relatives. If a candidate has not previously held certain key government appointments or acted as chairman or chief executive officer of a large company, he or she should have held a position of comparable seniority and responsibility in the public or private sector that, in the opinion of PEC, has given him or her the experience and ability in administering and managing financial affairs. If PEC is satisfied with the candidate's eligibility, it shall issue a Certificate of Eligibility no later than the day before nomination day. PEC's decision shall be final and cannot be appealed or reviewed in any court. PEC is not constitutionally obliged to provide any justification for its decision, although brief explanations have been provided in the past.

5.3.5 Apart from applying for the Certificate of Eligibility, potential candidates are required to collect nomination papers after the issue of the writ of election. Since nomination day should not be less than five days nor more than one month after the date of the writ, potential candidates would have less than a month's time to complete the paperwork. Potential candidates should fill up the nomination paper correctly, sign on it and have it signed by his or her proposer, seconder and at least four assentors whose names appear in the current register of electors.

5.3.6 At least two clear days before nomination day, potential candidates must provide the Registrar of Political Donations with a report stating all the donations they received from permissible donors⁶⁷ that amount to at least S\$10,000 (HK\$62,400) during the preceding 12 months. They must also submit a declaration stating that they did not receive any other donations, and that only donations from permissible donors were accepted. If the above paperwork is in order, the Registrar will issue a Political Donation Certificate not later than the eve of nomination day.

5.3.7 In addition, potential candidates are required to pay a deposit by noon on nomination day. The deposit amounts to three times of 8% of the total allowances payable to a Member of Parliament in the preceding calendar year. At the 2011 presidential election, the deposit was S\$48,000 (HK\$299,520). The deposit will be returned if the potential candidate is not nominated, withdraws his or her candidacy or is eventually elected. If the candidate loses the election, the deposit will be returned should he or she poll more than one-eighth of the total number of valid votes.

5.3.8 Potential candidates are required to present their duly completed nomination paper, the Certificate of Eligibility and the Political Donation Certificate to the returning officer, in duplicate and in person, by noon on nomination day. They should be accompanied by their proposer, seconder and at least four assentors. If there are two or more candidates nominated, the returning officer will issue a notice of contested election in the *Government Gazette*.

Presidential Elections Committee

5.3.9 Article 18(6) of the *Constitution* provides that PEC may regulate its own procedure. PEC deliberates on the merits of each application for the Certificate of Eligibility, taking into account the information provided by the applicant and obtained from various government agencies. If PEC thinks fit, it may request an applicant or his or her referees to appear before it prior to making its decision, and ask the applicant to provide further information. It may also interview anyone it considers to have relevant information about the applicants.

⁶⁷ Under the *Political Donations Act*, presidential candidates may only receive political donations from Singapore citizens who are at least 21 years old or Singapore-controlled companies which carry on business wholly or mainly in Singapore.

Early discussion of the qualifying requirements in 1990

5.3.10 When the *Constitution of the Republic of Singapore (Amendment) Bill* was introduced in 1990, public debate was "unprecedentedly in volume and diversity".⁶⁸ During the deliberations of the Select Committee on the Constitution of the Republic of Singapore (Amendment) Bill ("Select Committee") of the Singapore Parliament,⁶⁹ a main area of contention was the qualifications of the presidential candidates. The *Bill* took the approach that since the President is expected to protect the country's financial reserves and safeguard the integrity of the public service, presidential candidates should fulfil standards of competence, experience and rectitude.

5.3.11 Some representors who gave oral evidence to the Select Committee maintained that anyone who was not obviously disqualified should be free to stand for the election, even if he or she is manifestly unsuitable for the post. PEC should not shortlist candidates or exclude whom it considers lacking the prerequisites for the job. The prerogative to decide whether a candidate is worthy should be left to the electorate.

5.3.12 The Select Committee did not accept the above view and favoured retaining the "pre-qualifying" requirements for presidential candidates. In its view, the President's role is to safeguard Singaporeans against being ruled by a government which misuses the reserves, corrupts the public service, or abuses its powers. The criteria for selecting the President should thus be more stringent than those for selecting the Prime Minister. It "is not the right of every citizen to stand for election as President", and PEC should "ensure that voters are given qualified and suitable candidates to choose from".⁷⁰ The Select Committee believed that only with the pre-qualification approach can there be some guarantees on having the right person being chosen to fulfil the most important role of the President.

5.3.13 In order to guide PEC in deciding the suitability of presidential candidates, the Select Committee agreed that some criteria should be set. It believed that the most important role of the President is to protect the reserves. The qualifying criteria should therefore focus on candidates' ability, experience and integrity in administering the financial affairs of an organization or department equivalent in size or complexity.

⁶⁸ As stated in its report, the Select Committee on the Constitution of the Republic of Singapore (Amendment) Bill had received 40 written submissions from the public and invited 10 representors who represented a cross-section of the submissions to give oral evidence on the *Bill*.

⁶⁹ The Singapore Parliament sometimes forms ad hoc Select Committee to discuss the details of a Bill which affects the everyday life of the public. As such, one may say that it is equivalent to "Bills Committee" in the Hong Kong Legislative Council.

⁷⁰ *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No. 3) Bill*, p.iii.

5.3.14 Several representors pointed out that the composition of PEC was an important issue in view of its key function of pre-qualifying candidates. They suggested setting out the composition in the *Constitution*. The Select Committee agreed and proposed that PEC should comprise (a) the Chairman of the Public Service Commission⁷¹ to chair PEC; (b) the Chairman of the Public Accountants Board (merged with the Registry of Companies and Businesses to form the Accounting and Corporate Regulatory Authority⁷² in 2004); and (c) a member of the Presidential Council for Minority Rights⁷³ nominated by the chairman of that Council.⁷⁴

Further discussion of the qualifying requirements in 2005

5.3.15 In August 2005, when only one candidate managed to obtain the Certificate of Eligibility, some commentators argued that the criteria for eligibility were overly stringent, elitist and pro-establishment, which had severely limited the pool of eligible candidates. They also surmised that the qualifying requirements reflected the government's reluctance to see a real contest for presidency.⁷⁵ Some even worried about the legitimacy of the presidency.

⁷¹ The Public Service Commission is an independent body established under Part IX of the *Constitution*. It is responsible for appointing and promoting senior public servants, and deciding on disciplinary matters. Under Article 105(1) of the *Constitution*, the Chairman of the Public Service Commission shall be appointed in writing by the President, upon the advice of the Prime Minister.

⁷² The Accounting and Corporate Regulatory Authority is a statutory board under the Ministry of Finance. It is the national regulator of business entities and public accountants in Singapore. Based on Section 5(1)(a) of the *Accounting and Corporate Regulatory Authority Act*, the Chairman of Accounting and Corporate Regulatory Authority shall be appointed by the Minister for Finance. Ministers are appointed by the President on the advice of the Prime Minister from among the elected Members of Parliament.

⁷³ The Presidential Council for Minority Rights is a government body established under Part VII of the *Constitution*. Its main function is to scrutinize bills passed by Parliament to ensure that the proposed law is not discriminatory against any race, religion or community. Under Article 69 of the *Constitution*, the Chairman and members of the Presidential Council for Minority Rights shall be appointed by the President on the advice of the Cabinet.

⁷⁴ The tenure of PEC is not mentioned in both the *Constitution* and the *Presidential Elections Act*, but a PEC has been appointed in May every election year. According to the email reply from the Singapore Elections Department on 29 August 2013, a press release is in practice issued to inform the public of the start of the period for applications for the Certificate of Eligibility and the composition of PEC.

⁷⁵ See "Assess presidential hopefuls in public", *The Straits Times*, 12 August 2005, "No contest, no surprise", *The Straits Times*, 14 August 2005 and "What do the people want?", *The Straits Times*, 20 August 2005.

5.3.16 In response, the Press Secretary to Prime Minister wrote to *The Straits Times* on 20 August 2005 to clarify that the government had no reason to discourage a contest for the President.⁷⁶ He stressed that any contest for the post had to be the one between "qualified and worthy candidates". The strict requirements were justified on the basis that the President should be a person of integrity and moral standing, with the ability to monitor the financial affairs of the state and the management of the public service sector.

Number of presidential candidates

5.3.17 No specified limit for the number of presidential candidates has been set by the law. However, the stringent eligibility criteria had resulted in the presidential elections of 1999 and 2005 uncontested. In the 1993 and 2011 elections, there were only two and four contesting candidates respectively.

Nomination for the 2011 presidential election

5.3.18 In the 2011 election, PEC received a total of six applications and issued four Certificates of Eligibility. One successful applicant was a regional managing director of an asset management company. Although the company was registered with a paid-up capital of less than the required S\$100 million (HK\$624 million), PEC accepted that the applicant held a similar or comparable position of seniority and responsibility required of a presidential candidate. Another successful applicant was a chief executive officer of an insurance co-operative, who was found eligible because his company was regarded by PEC as comparable in size and complexity. Hence, observers found that PEC might have looked "at the spirit, rather than the letter" of the criteria, so that far more people could be eligible to run for the office of President.⁷⁷

⁷⁶ See "Why the high standards for presidential hopefuls", *The Straits Times*, 20 August 2005.

⁷⁷ See "PEC took 'spirit, not letter' of law", *The Strait Times*, 12 August 2011.

5.3.19 As mentioned above, there were two unsuccessful applicants in the 2011 presidential election. One of them was a corporation group chief financial officer and he was rejected because PEC considered the seniority and responsibility of a chief financial officer as being not comparable to that of a chief executive officer or chairman. For the other unsuccessful applicant, PEC rejected him for submitting an incomplete application form. The applicant subsequently updated his application and in a written clarification acknowledged that he did not qualify under the stipulated requirements and asked for a waiver from the requirements. PEC responded that it had no power to waive any of the qualifications for the office of President.

5.4 Voting procedures

5.4.1 Voting is compulsory in Singapore. Anyone who has not voted in an election without a valid reason (e.g. incapacity or being abroad) would have his or her name taken off from the electoral register. Voters whose name has been expunged from the electoral register will be ineligible to vote and to contest in future presidential or parliamentary elections. Expunged voters can apply to be reinstated to the electoral register, but they will incur a fine of S\$50 (HK\$312) should they fail to provide a valid reason for not voting.

5.4.2 Singapore operates a first-past-the-post system under which the elected President does not need an absolute majority. After counting the votes, the returning officer declares the candidate with the highest number of votes to be elected.

5.4.3 The 2011 presidential election was a tightly contested race. The Elections Department announced a recount of ballots a few hours after the vote counting began. The votes of the top two candidates, Tony Tan and Tan Cheng Bock, had a difference of less than 2% at the first tally. After the recount, Tony Tan won 35.19% of the votes cast and defeated Tan Cheng Bock by a narrow margin of 0.34 percentage points or 7 269 votes.

5.4.4 Critics of the government were quick to point out that almost 65% of Singaporeans did not vote for Tony Tan. Some went further to propose holding future presidential elections in two or more rounds (depending on the number of contesting candidates) in order to ensure an absolute majority for the elected President.⁷⁸

⁷⁸ For example, the opposition Reform Party stated that a two-round system should be implemented to replace the first-past-the-post voting.

5.5 Election campaign and finance

Election campaign

5.5.1 Candidates can start campaigning right after the issue of the notice of contested election, up to the day before polling day. The eve of polling day is designated as "cooling-off day", a day when election campaigning is prohibited.

5.5.2 There are a number of restrictions on campaigning activities. No candidate is allowed to advertise over television, in newspapers, magazines or periodicals, or in a public place. Nevertheless, candidates may be given free equal airtime by the television stations. The display of banners and posters by candidates during the campaigning period must also be authorized by the returning officer. The returning officer determines the maximum number of posters and banners that may be displayed in any public place, and allots equally among the candidates the number of such posters and banners displayed.

Campaign finance

5.5.3 Campaign finance is regulated by the *Political Donations Act*. The *Act* prohibits political associations and candidates from accepting donations except from permissible donors, and restricts the receipt of anonymous donations to less than S\$5,000 (HK\$31,200) in total per reporting period.

5.5.4 The Singapore government does not provide any subsidies to the presidential candidates. Candidates should finance their election campaign by self-financing and donations from permissible donors.

5.5.5 There are spending limits for all Singaporean elections. For presidential election, the maximum amount a candidate can spend on election-related expenses is S\$600,000 (HK\$3.74 million)⁷⁹, or an amount equal to S\$0.3 (HK\$1.87) per elector on the electoral register, whichever is the greater.

5.5.6 The election agents of all contesting candidates must submit a declaration and a return of election expenses to the returning officer within 31 days of the day on which the election result is published in the *Government Gazette*. Overspending incurs a fine up to S\$2,000 (HK\$12,480), as well as disqualification for three years from being on the register of electors.

⁷⁹ As there were 2 274 773 registered voters at the time of the 2011 presidential election, this limit was S\$0.26 (HK\$1.62) per registered voter.

Chapter 6 – Analysis

6.1 Introduction

6.1.1 Based on the findings in the previous chapters, this chapter compares the nomination and voting procedures as well as the election campaign restrictions governing the presidential elections in the four selected places, namely, France, Poland, the United States ("the US") and Singapore. For easy reference, a summary table is provided in **Appendix II**.

6.2 Nomination procedures

Who can nominate presidential candidates

6.2.1 The four selected places have established specific mechanisms for nomination of presidential candidates, under which nomination can be made by elected representatives, political parties, voters, or through the endorsement of a committee.

Elected representatives

6.2.2 In France, presidential candidates are nominated through "sponsorship" by public office holders such as Members of Parliament and mayors. This procedure is to eliminate frivolous candidacies.⁸⁰ It was established in 1962 when presidential election by universal suffrage was first adopted in order to regulate the number of candidates and reject any applications deemed insufficiently serious.

⁸⁰ See French Embassy in New Delhi (2012) and Constitutional Council (2013a).

6.2.3 A particular point of contention is the constitutionality of the public sponsorship system under which the Constitutional Council is required to publish a list of 500 names of sponsoring elected officials for each presidential candidate. Some observers have pointed to the risk of political manipulation and blackmail under the system, which may render small party and independent candidates into a relatively disadvantageous position. In particular, the transparency of the public sponsorship system allows the major parties to pressure their members not to accord any sponsorship to non-party candidates.

6.2.4 However, some people argue that the public sponsorship system is necessary for the proper conduct of presidential elections. In particular, the system helps prevent presidential elections from being exploited by candidates who want to publicize themselves rather than compete for presidency seriously.⁸¹ In order to improve the current sponsorship system, there are suggestions of returning to anonymous sponsorship in a move to spare sponsoring elected official from facing political pressure arising from making their name public. However, some observers believe that public office holders should assume their responsibility publicly and public sponsorship should not be a problem for them.

Political parties

6.2.5 In the US, political parties can nominate candidates for presidency if they obtained a certain percentage of total votes in a preceding election. With the support of voters in the previous election, these political parties have the legitimacy to nominate candidates for the upcoming election. In party nomination, voters entrust the responsibility of candidate selection to the political parties and rely on their safeguards on the selection criteria. Each political party may establish its own criteria and method to choose its official candidate to stand for the election, such as holding primary election or party convention.

6.2.6 However, not all persons aspiring to run for the presidency can get nomination from their party due to fierce competition among party members, as have been the cases in the US. Meanwhile, some potential candidates may not have any party affiliation. There is a view that nomination of candidates should not be monopolized by political parties, and there should be an alternative to party nomination.

⁸¹ See *Sponsorship of Candidates for the Presidential Election*.

Voters

6.2.7 In the US, petition with supporting signatures is an alternative to party nomination. A potential candidate may choose not to enter into the pre-selection race of political parties and seek nomination as an independent to contest the presidential election. In Poland, all nominations are made by ordinary citizens, no matter whether the potential candidates are party-affiliated or not. In this connection, all eligible potential candidates who can muster a certain level of public support are able to run for the presidency. Nomination by a certain number of voters not only shows the candidate's public support, but may also help limit voter confusion by reducing the number of frivolous and spurious candidates.

Endorsement by a committee

6.2.8 In Singapore, potential candidates are required to get the endorsement of the Presidential Elections Committee ("PEC") as they have to obtain a Certificate of Eligibility from PEC before they can be officially nominated. As explained by the Press Secretary to Prime Minister of Singapore, as the *Constitution* requires the President not to belong to any political party, it is therefore not possible to rely on the party system to provide any safeguards for the selection criteria. PEC is thus entrusted with the responsibility for ensuring that voters have suitable persons to choose from as their President.⁸²

6.2.9 As early as the discussion on the constitutional amendments to introduce the elected presidency in 1990, some people have argued that PEC should not pre-qualify or shortlist candidates and the prerogative to decide whether a candidate is qualified should be left to the electorate. Nevertheless, this view has not been accepted by the lawmakers. The qualifying requirements have been justified on the grounds that the President is a position of crucial importance, and the presidential candidates should thus have the ability to monitor the financial affairs of the state and the management of the public service sector.

⁸² See "Why the high standards for presidential hopefuls", *The Straits Times*, 20 August 2005.

How to nominate

6.2.10 It is observed that the design of nomination procedures in the four selected places is aimed at addressing different concerns. One major concern is to let voters have a sufficient pool of candidates for the election.⁸³ The need to prevent frivolous applications by proper "filtering" is another concern of the selected places. In France, Poland and the US, eligible potential presidential candidates should obtain the support of people who are eligible to nominate as well as a specified number of supporting signatures in order to secure a nomination. In Singapore, the Presidential Elections Committee is responsible for verifying the eligibility of presidential candidates as it is considered necessary to use eligibility criteria to sift out incompetent, weak and flawed candidates, so that elections can be conducted properly.⁸⁴

Collecting requisite supporting signatures

6.2.11 The requirement of collecting supporting signatures can help reflect potential candidates' commitment to the candidacy and their level of public support. Such requirement is normally specified in the form of collecting a required number of signatures. Nevertheless, in France and in some states in the US, potential candidates are also required to collect the supporting signatures from various administrative divisions to ensure that they get a broadly-based public support.

6.2.12 However, collecting requisite supporting signatures for nomination may become a hurdle for small party and independent candidates on several fronts. First is the pool of people who are eligible to nominate. If the nominations are made by a small or closed group of people, as in the case of France, some potential candidates may end up being unable to present themselves for the election due to the lack of sufficient signed nominations. Secondly, too large the number of requisite supporting signatures may pose pressures on candidates who are less known or less popular. Thirdly, as reflected by the 2010 presidential election in Poland, potential candidates with fewer resources may face difficulties in mobilizing support when the time allowed for gathering the requisite signatures is very short.

⁸³ See Tan, K. and Lam, P.E. (1997) *Managing Political Change in Singapore: The elected presidency*.

⁸⁴ See the response to the criticisms on the pre-qualifying mechanism made by the Press Secretary to Prime Minister: "Why the high standards for presidential hopefuls", *The Straits Times*, 20 August 2005.

Primary elections and party conventions

6.2.13 For party-affiliated candidates in the US, they usually have to pass a pre-selection held within their party before getting formal nomination. Party candidates can be selected by a primary election or party convention. Even for places such as France and Poland where the candidates are not really "nominated" by the political parties, pre-selection exercises are still convened to mobilize supporters and enhance the candidate's legitimacy.

6.2.14 Primary election is used by political parties in France, Poland and the US to select their presidential candidates. In particular, Poland's Civic Platform held primary election in 2010 to select its official candidate without increasing tensions within the party. This was the first time for a Polish party to choose its candidate by primary election.

Pre-qualification by a committee

6.2.15 Compared with the other three selected places, Singapore sets out more specific and stringent qualifying criteria for presidential candidates. It is particularly the case in Singapore, as the President needs to have a degree of financial expertise so that he or she can determine whether the reserves are being wisely spent. Potential candidates must satisfy PEC that they are "a person of integrity, good character and reputation" and that they have the experience and ability to carry out effectively the functions and duties of the President.

6.2.16 According to the Select Committee on the Constitution of the Republic of Singapore (Amendment) Bill, it is necessary to retain the pre-qualifying requirements for presidential candidates to provide the safeguards for choosing the right person to fulfil the most important role required of a Singapore President. However, these qualifying criteria have been regarded by some commentators as elitist and pro-establishment in nature, severely limiting the pool of eligible candidates.

6.3 Voting procedures

6.3.1 Voting in the presidential elections in the four selected places fall into two camps: majority versus plurality voting systems. The first-past-the-post system does not require absolute majority and may arouse concerns over the legitimacy of the elected President. In contrast, an absolute majority is necessary for a candidate to win under the two-round system and the elected President may have more legitimacy as a result.

6.3.2 In the 2011 presidential election in Singapore, Tony Tan won the election with 35% of the vote, leading by a margin of 0.34 percentage points or 7 269 votes ahead of his nearest rival. Shortly after the election, Prime Minister Lee Hsien Loong maintained that the election had produced an unambiguous winner under the first-past-the-post system.⁸⁵ However, there were criticisms that almost 65% of Singaporeans did not vote for Tony Tan. In order to ensure an absolute majority for the elected President, some people suggest that future presidential elections may be held in two or more rounds.⁸⁶

6.3.3 Technically speaking, voters in the US do not vote directly for the President but vote within each state for a group of electors who are pledged to a particular presidential candidate. Since the electors are bound by their pledges, voters are actually making their choice among the presidential candidates. Usually, electoral votes align with the popular vote in an election. However, there is still the possibility of a candidate losing the nationwide popular vote but winning the presidential election through the electoral vote. To rectify the problem of the Electoral College, several states have recently passed a National Popular Vote law whereby states would pool their electoral votes in favour of the candidate that wins the national popular vote.

⁸⁵ See Prime Minister's Office (2011c) *Press Statement by Prime Minister Lee Hsien Loong on Presidential Election 2011 Presidential Election*.

⁸⁶ See "The Reform Party Calls for A Second Round of Voting in the PE", *Press Release of the Reform Party*, 28 August 2011; "Singapore votes for stability", *Asia Times*, 2 September 2011.

6.4 Election campaign and finance

6.4.1 In addition to the nomination and voting procedures, the restrictions on election campaign and finance as well as government subsidies provided to presidential candidates may also affect candidates' participation in the electoral process.

Restrictions on election campaign and finance

6.4.2 In all the four places studied, there are restrictions on election campaign, albeit with different degrees and scope. Notwithstanding the differences, the same rule broadly applies in these places: equal treatment for all candidates. All candidates enjoy a level playing field, regardless of whether they are major party, small party or independent candidates.

6.4.3 Small party and independent candidates may fall into a disadvantageous position as they generally have less money and other resources than major party candidates. With spending limits imposed on campaign expenses, they can be placed on a more equal footing with the major party candidates. France, Poland and Singapore have spending limits for the presidential elections. Both Poland and Singapore set out a spending limit to a level of less than HK\$2 per registered voter, compared with HK\$4 per registered voter in France. In contrast, the US imposes no limits on campaign spending as the US Supreme Court has held that any limitation would constrain the right to free speech. The allowance for high level of campaign spending may be one of the factors contributing to the dominant role of the major party candidates in the US presidential elections.

Government subsidies to candidates

6.4.4 Another way to ensure equality between candidates is the provision of government subsidies. While no government subsidies to the presidential candidates have been provided in Poland and Singapore, and their presidential candidates have to finance their election campaign through their own means, these two places have imposed stricter spending limits than France and the US.

6.4.5 In contrast, both France and the US provide government subsidies to the candidates. Presidential candidates in France are entitled to government subsidies once they have got nominated. The government pays in advance a certain amount of money to the candidates when the official list of candidates is published. After the election, each candidate is entitled to reimbursement of campaign expenses from the government. In the US, qualified presidential candidates receive federal government funds to pay for the valid expenses of their campaigns in both the primary and general elections. As a safeguard, candidates receiving public funding in France and the US are subject to limitations and rules. For example, candidates are required to forfeit the funding should they exceed the spending limits.

Appendix I**Summary of petition requirements for independent candidates**

State/District	Petition requirements for independent candidates
Alabama	<ul style="list-style-type: none"> containing signatures of at least 5 000 qualified electors
Alaska	<ul style="list-style-type: none"> containing signatures of qualified voters equal to at least 1% of the number of votes cast at the last presidential election
Arizona	<ul style="list-style-type: none"> containing signatures equal to 3% of the registered voters in the state
Arkansas	<ul style="list-style-type: none"> containing names of 1 000 qualified electors
California	<ul style="list-style-type: none"> signed by the number of voters equal to at least 1% of the entire number of registered voters in the state
Colorado	<ul style="list-style-type: none"> containing signatures of at least 5 000 eligible electors a fee of US\$500 (HK\$3,880)
Connecticut	<ul style="list-style-type: none"> containing signatures of qualified electors equal to the lesser of 1% of the votes cast at the last presidential election, or 7 500
Delaware	<ul style="list-style-type: none"> sworn declaration of non-affiliation and a nominating petition signed by at least 1% of the total number of registered voters as of 31 December of the year immediately preceding the general election
District of Columbia	<ul style="list-style-type: none"> signed by at least 1% of registered qualified electors of the District of Columbia
Florida	<ul style="list-style-type: none"> signed by 1% of the registered electors of the state
Georgia	<ul style="list-style-type: none"> signed by the number of voters equal to 1% of the total number of registered voters eligible to vote in the last presidential election a qualifying fee equal to 3% of the annual fee of the office
Hawaii	<ul style="list-style-type: none"> containing signatures of at least 1% of the number of votes cast in the state at the last presidential election

Appendix I (cont'd)**Summary of petition requirements for independent candidates**

State/District	Petition requirements for independent candidates
Idaho	<ul style="list-style-type: none"> signed by 1 000 qualified electors
Illinois	<ul style="list-style-type: none"> signed by 1% of the number of voters who voted at the next preceding statewide general election or 25 000 qualified voters, whichever is less
Indiana	<ul style="list-style-type: none"> containing the signatures of registered voters equal to 2% of the votes cast at the last election for secretary of state
Iowa	<ul style="list-style-type: none"> signed by at least 1 500 eligible electors residing in at least 10 counties of the state
Kansas	<ul style="list-style-type: none"> signed by at least 5 000 qualified voters
Kentucky	<ul style="list-style-type: none"> signed by at least 5 000 registered voters
Louisiana	<ul style="list-style-type: none"> containing at least 5 000 signatures of registered voters, at least 500 of which must be obtained in each of the congressional districts
Maine	<ul style="list-style-type: none"> signed by at least 4 000 and not more than 6 000 voters
Maryland	<ul style="list-style-type: none"> containing the signatures of at least 1% of the registers voters of the state
Massachusetts	<ul style="list-style-type: none"> containing the signatures of at least 10 000 voters
Michigan	<ul style="list-style-type: none"> signed by a number of qualified and registered electors of the state equal to not less than 1% of the total number of votes cast for all candidates for governor at the last election in which a governor was elected at least 100 registered electors in each of at least ½ of the congressional districts of the state
Minnesota	<ul style="list-style-type: none"> containing the signatures of at least 2 000 eligible voters
Mississippi	<ul style="list-style-type: none"> containing the signatures of 1 000 qualified electors
Missouri	<ul style="list-style-type: none"> containing the signatures of at least 10 000 registered voters

Appendix I (cont'd)**Summary of petition requirements for independent candidates**

State/District	Petition requirements for independent candidates
Montana	<ul style="list-style-type: none"> containing the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, or 5 000 electors, whichever is less
Nebraska	<ul style="list-style-type: none"> containing the signatures of at least 2 500 registered voters who did not vote in the primary election of any political party that held a presidential preference primary election
Nevada	<ul style="list-style-type: none"> containing the signatures of registered voters equal to at least 1% of the total number of votes cast at the last preceding general election for the office of representative in Congress a filing fee of US\$250 (HK\$1,940)
New Hampshire	<ul style="list-style-type: none"> containing the signatures of 3 000 registered voters, 1 500 from each congressional district in the state a fee of US\$250 (HK\$1,940)
New Jersey	<ul style="list-style-type: none"> containing the signatures of 800 legally qualified voters of the state
New Mexico	<ul style="list-style-type: none"> containing the signatures of voters equal to at least 3% of the total vote cast for governor at the last preceding general election for that office
New York	<ul style="list-style-type: none"> containing 15 000 signatures, with at least 100 signatures coming from each of ½ of the congressional districts in the state
North Carolina	<ul style="list-style-type: none"> containing the signatures of registered voters equal to 2% of the total number of voters who voted in the most recent general election for governor signed by at least 200 registered voters from each of the 4 congressional districts in the state
North Dakota	<ul style="list-style-type: none"> containing the signatures of 4 000 qualified electors
Ohio	<ul style="list-style-type: none"> containing the signatures of at least 5 000 qualified electors

Appendix I (cont'd)**Summary of petition requirements for independent candidates**

State/District	Petition requirements for independent candidates
Oklahoma	<ul style="list-style-type: none"> containing the signatures of registered voters equal to at least 3% of the total votes cast in the last general election for President
Oregon	<ul style="list-style-type: none"> containing the signatures of individual electors equal to not less than 1% of the total votes cast for all candidates for presidential electors at the last general election
Pennsylvania	<ul style="list-style-type: none"> containing the signatures of qualified electors equal to at least 2% of the largest entire vote cast for any elected candidate in the state at the last preceding election at which statewide candidates were voted for a fee of US\$200 (HK\$1,552)
Rhode Island	<ul style="list-style-type: none"> containing the signatures of 1 000 voters
South Carolina	<ul style="list-style-type: none"> containing the signatures of at least 5% of qualified registered electors, provided that the petition candidate is not required to furnish more than 10 000 signatures
South Dakota	<ul style="list-style-type: none"> containing the number of signatures equal to at least 1% of the total combined vote cast for governor at the last certified gubernatorial election
Tennessee	<ul style="list-style-type: none"> containing the signatures of 25 or more registered voters for each elector allotted to the state, which totals 275 valid signatures
Texas	<ul style="list-style-type: none"> containing the number of signatures equal to at least 1% of the total votes received in the state by all candidates for President in the most recent presidential election
Utah	<ul style="list-style-type: none"> containing the signatures of 1 000 registered voters a fee of US\$500 (HK\$3,880)
Vermont	<ul style="list-style-type: none"> containing the signatures of 1 000 registered voters

Appendix I (cont'd)**Summary of petition requirements for independent candidates**

State/District	Petition requirements for independent candidates
Virginia	<ul style="list-style-type: none"> containing the signatures of at least 10 000 qualified voters including signatures of at least 400 qualified voters from each congressional district
Washington	<ul style="list-style-type: none"> holding an organized assembly attended by at least 100 registered voters a petition containing the signatures of at least 1 000 registered voters and certificate of nomination filed no later than one week after the convention is held
West Virginia	<ul style="list-style-type: none"> containing the signatures of registered voters equal to at least 1% of the total votes cast for President in the last preceding presidential election a fee equivalent to 1% of the annual salary of the office, provided that the filing fee for President or Vice President must not exceed US\$2,500 (HK\$19,400)
Wisconsin	<ul style="list-style-type: none"> containing between 2 000 and 4 000 signatures
Wyoming	<ul style="list-style-type: none"> containing the signatures of registered electors numbering not less than 2% of the total number of votes cast for US representative in the last general election a fee of US\$200 (HK\$1,552)

Sources: National Association of Secretaries of States (2012) and *District of Columbia Code*.

Appendix II**Nomination and voting procedures governing presidential elections in selected places**

	France	Poland	The United States	Singapore
Nomination procedures				
Who can nominate presidential candidates	<ul style="list-style-type: none"> Elected representatives. 	<ul style="list-style-type: none"> Voters. 	<ul style="list-style-type: none"> Political parties or voters. 	<ul style="list-style-type: none"> Endorsement by a committee.
How to nominate	<ul style="list-style-type: none"> Potential candidates are required to receive at least 500 signed nominations from among some 42 000 elected officials, comprising Members of Parliament and mayors. In order to show a broadly-based support, signed nominations should be sought from at least 30 of the 101 départements and seven overseas territories. Moreover, not more than 10% of the required sponsors can come from a single département or overseas territory. 	<ul style="list-style-type: none"> Potential candidates are required to collect signatures from at least 100 000 eligible voters for nomination. At least 15 citizens should establish an election committee to conduct the election campaign and gather the 100 000 signatures required on behalf of the candidate. 	<ul style="list-style-type: none"> Political parties can nominate candidates for presidency if they obtained a certain percentage of total votes in the preceding election. These parties usually select their candidates by primaries or caucuses. Small party and independent candidates are also able to run for the presidency if they have collected a specified number of supporting signatures from voters to file a "petition". 	<ul style="list-style-type: none"> Potential candidates have to obtain a Certificate of Eligibility issued by the Presidential Elections Committee ("PEC") before they can be officially nominated. The Certificate attests that PEC is satisfied with the candidate's integrity, good character and reputation, as well as his or her experience and ability to carry out effectively the functions and duties of the President.

Appendix II (cont'd)

Nomination and voting procedures governing presidential elections in selected places

	France	Poland	The United States	Singapore
Voting procedures				
Voting system	<ul style="list-style-type: none"> Two-round. 		<ul style="list-style-type: none"> Electoral College. 	<ul style="list-style-type: none"> First-past-the-post.
Whether an absolute majority is needed	<ul style="list-style-type: none"> In the first round of voting, an absolute majority of all votes cast is mandatory to win the election outright. If no candidate obtains an absolute majority in the first round, a second round is held two weeks later between the two candidates who received the highest number of votes in the first round. In the second round of voting, the candidate with more votes is elected. 		<ul style="list-style-type: none"> A first-past-the-post system is adopted at state level. No absolute majority is needed. The winner in each state, with the exception of Maine and Nebraska, gains all the electoral votes of that state. In the Electoral College, a candidate must receive an absolute majority to be elected. 	<ul style="list-style-type: none"> The candidate who gets more votes than all other candidates is elected, regardless of his or her percentage share of the votes cast.
Election campaign and finance				
Restrictions on election campaign	<ul style="list-style-type: none"> There are strict and detailed regulations for campaign coverage. Candidates should be granted equitable and equal coverage in broadcast media. 	<ul style="list-style-type: none"> Each election committee is allocated equal amount of time in state broadcasts. 	<ul style="list-style-type: none"> No requirements for equal and balanced news coverage, but in the 60 days prior to general elections, commercial broadcasters are obliged to provide "reasonable access" to all candidates. 	<ul style="list-style-type: none"> There are a number of restrictions on campaigning activities. The rule of equal treatment applies.
Spending limits	<ul style="list-style-type: none"> In 2012, the spending limits were €0.37 (HK\$3.77) and €0.49 (HK\$4.99) per registered voter for the two rounds respectively. 	<ul style="list-style-type: none"> In 2010, the spending limit was €0.12 (HK\$1.22) per registered voter. 	<ul style="list-style-type: none"> There are no limits on campaign spending as the Supreme Court has held that any limitation would constrain the right to free speech. 	<ul style="list-style-type: none"> In 2011, the spending limit was S\$0.3 (HK\$1.87) per elector.
Government subsidies	<ul style="list-style-type: none"> Candidates are entitled to reimbursement and the state pays a certain amount of money in advance for campaign expenses when the official list of candidates is published. 	<ul style="list-style-type: none"> No government subsidies have been provided. 	<ul style="list-style-type: none"> Qualified presidential candidates receive federal government funds to pay for the valid expenses of their campaigns in both the primary and general elections. 	<ul style="list-style-type: none"> No government subsidies have been provided.

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