

INFORMATION NOTE

The Selection of Head of State and Head of Government in Selected Places

1. Introduction

1.1 This information note aims at providing information about the selection of head of state and head of government in the French Republic (France), the Federal Republic of Germany (Germany), the United States of America (US), the United Kingdom (UK), the Republic of Singapore (Singapore), the State of New Jersey (New Jersey) of the US and Scotland of the UK.

1.2 While the offices of the head of state and the head of government are separated in France, Germany, the UK and Singapore, the selection system of each place has certain distinctive features. In France, the head of state (President) is elected by universal suffrage independently of Parliament and has powers to select the head of government (Prime Minister) nominated by Parliament. In Germany, the head of state (President) is elected by an electoral college, while the head of government (Chancellor) is elected by Parliament. In the UK, the head of government (Prime Minister) is selected by the dominant party in Parliament, but the head of state (Monarch) is hereditary. In Singapore, the head of state (President) is elected by universal suffrage, while the head of government (Prime Minister), who has more substantive powers, is selected by the dominant party in Parliament.

1.3 The US is chosen because the roles of the head of state and the head of government are merged in the President who is elected by an electoral college. New Jersey is chosen because the Governor, who is also both the head of the local state and the head of government, is directly elected by the people of the state. Scotland is chosen because the First Minister, who is the head of government of Scotland, is nominated by the Scottish Parliament and appointed by the Monarch of the UK. The experience of New Jersey and Scotland can be useful reference at the local government level to Hong Kong.

2. France

Head of state

2.1 In France, the President of the Republic is the head of state.

Selection method

2.2 The President is directly elected by an absolute majority of the votes cast in a universal suffrage. Any citizens aged not less than 18 are eligible to be registered as voters. Both voter registration and voting are not compulsory.

2.3 The presidential election can run up to two rounds. If an absolute majority is not obtained on the first ballot, a second ballot will take place. After taking into consideration of the withdrawal of candidates with more votes, if any, only the two candidates who have received the largest number of votes on the first ballot can stand on the second ballot where the candidate who obtains an absolute majority is elected as the President.

Qualifications

2.4 A presidential candidate must be at least 23 years of age, of French nationality, on the electoral roll in his or her *commune* of residence, and in full possession of his or her civic rights.

2.5 Additionally, the candidate must have the public endorsement of at least 500 representatives who are members of certain public bodies such as Parliament and local councils. These representatives must come from at least 30 of about 100 *départments* (which are geographical administrative units equivalent to counties) and overseas territories, with not more than 10% of the representatives from a single *département* or territory.

2.6 The Constitutional Council, which is a court, has a function of monitoring presidential candidates' eligibility and their compliance with the laws on incompatibility of offices.¹ The Council comprises nine members, of whom three are appointed by the President, three by the president of the National Assembly and three by the president of the Senate. In addition, former Presidents are ex officio members, although none have actually sat on the Council. The Council's president, who can cast the deciding vote in the event of a tie, is appointed by the President among the nine members.

Major functions and powers

- 2.7 The President is empowered to:
- (a) appoint the Prime Minister nominated by the National Assembly, and terminate the appointment only when the Prime Minister tenders the resignation of the Government;
 - (b) appoint Ministers and terminate their appointments, on the advice of the Prime Minister;
 - (c) preside over the Council of Ministers (cabinet);
 - (d) promulgate acts of Parliament, and ask Parliament to reconsider those acts or sections of an act before promulgation;
 - (e) dissolve the National Assembly after consulting the Prime Minister and the president of the Assembly;
 - (f) submit, on a proposal from the Government, any important government bill to a referendum, and refer legislation to the Constitutional Council for review of its constitutionality before it is promulgated;
 - (g) be the guarantor of the independence of the judicial authority and preside over the High Council of the Judiciary, which advises on the appointment of judges;
 - (h) make appointments to the highest civil and military posts;
 - (i) be the commander-in-chief of the armed forces; and
 - (j) exercise emergency powers.

¹ According to the Constitution, the Constitutional Council has various functions. In particular, it has jurisdiction of ensuring the proper conduct of not only presidential elections but also general and Senate elections and referendums. It can also hand down decisions in election disputes and rules on the constitutionality of statutes and rules of procedure of parliamentary assemblies.

Term of office

2.8 The President is elected every five years and can be re-elected once.

Head of government

2.9 In France, the Prime Minister is the head of government.

Selection method

2.10 The Prime Minister is nominated by an absolute majority of the 577 deputies of the National Assembly, and is appointed by the President. These deputies, whose eligibility requirements are the same as those for the President, are themselves directly elected by universal suffrage under a single-member constituency and second ballot system.²

Qualifications

2.11 While a candidate for the Prime Minister is required to meet the same general requirements for presidential candidates as specified in paragraph 2.4, there are no specific eligibility requirements. The Prime Minister cannot be a National Assembly deputy or Senator, but is expected to be capable of winning the support of the National Assembly majority.³

Major functions and powers

- 2.12 The Prime Minister is empowered to:
- (a) direct the operation of the Government which is responsible to Parliament;
 - (b) be responsible for national defense;
 - (c) ensure the implementation of legislation;
 - (d) make regulations and appointments to civil and military posts; and

² The election of a National Assembly deputy is divided into two rounds. In the first round, all but two candidates in a constituency are eliminated; in the second round, one of those remaining two is elected to the National Assembly. Both voter registration and voting of the election are not compulsory. Citizens aged not less than 18 are eligible to be registered as voters.

³ For example, the current Prime Minister, Jean-Pierre Raffarin, who was previously a senator, has been the vice-chairman of Democratie Liberale (which is a major party in Parliament) since 1997, see <http://www.info-france-usa.org/atoz/governmt.asp>.

- (e) deputize for the President as the chairman of the national defense councils and committees and of the Council of Ministers when required.

2.13 The Prime Minister's powers are held in check and balance by the involvement of the Ministers in policy making. In particular, when required, the acts of the Prime Minister need the countersignature of the Ministers responsible for their implementation.

Term of office

2.14 The Prime Minister serves for a term of a maximum of five years, and can be re-appointed.

3. Germany

Head of state

3.1 In Germany, the head of state is the Federal President.

Selection method

3.2 The President is elected by an absolute majority of the votes cast by members of a constitutional body known as the Federal Convention (FC) without debate. Convened by the president of the Bundestag, FC has 1 206 members which comprise:

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- (a) all Members of the Bundestag (the Federal Assembly) which currently has 603 seats elected by universal suffrage under a mixed electoral system, with approximately half of them returned by direct constituency elections and the other half by proportional representation;⁴ and
 - (b) local delegates, the number of which is equal to that of Bundestag Members, who are elected by parliaments of the 16 Laender (each parliament contributes a number of delegates in proportion to its state population) and are not required to be Members of the Land (the singular form of Laender) parliament concerned.

Rounds of presidential election

3.3 The presidential election can run up to three rounds. If no candidate obtains an absolute majority of FC on the first ballot, a second ballot will take place. If once again no candidate obtains an absolute majority on the second ballot, there will be a third ballot on which the candidate who obtains a simple majority is elected. Neither the first nor the second round of election eliminates any of the candidates. Nevertheless, candidates who lack sufficient support may choose to withdraw from the election.

Qualifications

3.4 Not counting the general nationality requirement, there are only two statutory requirements for being a presidential candidate, namely being entitled to vote at Bundestag elections and being at least 40 years of age.

3.5 In addition, after being elected, the President must not be a member of the Government or a legislative body of the federation or a Land. Nor can the President hold any other salaried office, or engage in any trade or profession, or belong to the management or supervisory board of any enterprise conducted for profit.

⁴ At the Bundestag election, each voter casts two votes. The first vote is for a constituency candidate. The winner of a simple majority of votes in each constituency represents that constituency in the Bundestag. The second vote is cast for a party which draws up a list of candidates (a ranking of candidates including constituency candidates) in each Laender (equivalent to states). The total number of seats of each party in the Bundestag is allotted in accordance with the party's total nationwide share of the second votes (proportional representation). Once the seats won by individual constituency candidates in the first vote have been filled, the remainder of a party's allotment of seats is filled from its list of candidates nominated for the second vote. Candidates placed high on their party's list in respective Laender are assured seats in the Bundestag, even if they lose in the first vote. Candidates for the Bundestag election must be German citizens aged not less than 18, while any citizens aged not less than 18 are eligible to be registered as voters. They are nominated by state party caucuses, and there are no primaries for the nomination. Both voter registration⁴ and voting are not compulsory.

Major functions and powers

3.6 Representing Germany, the President is required to be non-partisan with powers that rest on the moral authority of the office rather than political power. The President is empowered to perform largely the following ceremonial functions:

- (a) appointing and dismissing Federal Ministers on the advice of the Federal Chancellor (the Chancellor);
- (b) participating in the legislative process through the promulgation of laws and the dissolution of the Bundestag;
- (c) appointing and dismissing federal judges, federal civil servants and senior military officers; and
- (d) representing the Federation to conclude treaties with foreign states.

3.7 In order to be valid, the President's orders and directions must have the countersignature of the Chancellor or of the Federal Minister concerned.

Terms of office

3.8 The President is elected every five years, and can only be re-elected once.

Head of government

3.9 In Germany, the head of government is the Chancellor.

Selection method

3.10 The Chancellor is elected by an absolute majority of Bundestag Members without debate on the nomination by the President.

3.11 The President's nomination is the result of negotiation among various parties, as it is rare for one party to gain an absolute majority in the Bundestag (only once, from 1957 to 1961, did one party hold an absolute majority). The usual practice is that each party pledges its votes to a candidate for the Chancellor nominated in its caucus held before the Bundestag election. Once the Bundestag election determines the number of seats each party receives, the party or coalition of parties that commands the most seats presents a candidate to the President. If a candidate obtains such a majority, the President must appoint that candidate as the Chancellor.

3.12 If no candidate obtains an absolute majority, the Bundestag has 14 days to elect another person. If once again no candidate is able to gain such a majority, a new election will take place without delay at which the Chancellor can be elected with a simple majority instead of an absolute majority. In the event that a Chancellor is elected with a simple majority, the President must decide within seven days whether to appoint the Chancellor, or to dissolve the Bundestag and call for a new Bundestag election within the next 60 days. Up to now, all the candidates nominated by the President have been elected with an absolute majority by the Bundestag.

Qualifications

3.13 To be eligible to be elected as the Chancellor, the person has to be a Bundestag Member, and is not allowed to hold any other salaried office, engage in any trade or profession, or belong, without the consent of the Bundestag, to the management or the supervisory board of an enterprise conducted for profit.

Major functions and powers

3.14 The Chancellor is empowered to:

- (a) select Ministers who are directly responsible to the Chancellor, usually, but not necessarily, from among Bundestag Members who can retain their parliamentary seats while serving as Ministers;
- (b) appoint a cabinet member to serve as the Vice-Chancellor who is usually the Foreign Minister;
- (c) determine and be responsible for the general guidelines of policy-making at home and abroad;
- (d) conduct the proceedings of the Federal Government, including resolving differences of opinion between Ministers; and
- (e) advise the President to dissolve the Bundestag if a motion of the Chancellor for a vote of confidence is not supported by an absolute majority of Bundestag Members.

Term of office

3.15 As the Bundestag election is held at least every four years, the Chancellor serves for a term of a maximum of four years, and can be re-elected. Before a term of the Bundestag expires, a new Chancellor may be elected if the incumbent Chancellor resigns⁵ or calls for dissolution of the Bundestag.

4. The USHead of state and head of government

4.1 In the US, the President serves as both the head of state and the head of government.

Selection method

4.2 The President is chosen by an electoral college system which operates in the following way:

Allocation of electoral college votes

4.3 Each state is allocated a number of electoral college votes equal to its total number of Senators (100, two per state) and Representatives (435, the allocation to states depends on population), while there are three electoral votes for Washington D.C. Since 1961, the electoral college has had 538 votes. The presidential candidate must obtain an absolute majority of votes (i.e. at least 270 votes) to win. If no candidate gains 270 votes, the election is decided by the House of Representatives, with all Representatives of a state voting as a unit (i.e. each state has one vote). This situation has occurred twice in the history of the presidential election.

⁵ To prevent an immediate vacuum of power after the incumbent Chancellor resigns, the Bundestag can elect a new Chancellor by an absolute majority of its Members, even though it is not dissolved.

Nomination of electors

4.4 The political parties (or independent candidates) in each state submit to the state's chief election official slates of individual electors representing their choice for the President and the Vice-President. The total number of electors on each party slate is equal to the number of the state's electoral college votes. The process for nominating electors varies among the states. The most common practice is that the two major political parties nominate their own electors either in the state party conventions or through appointment by their state party leaders, while smaller parties and independent candidates simply designate theirs. Members of Congress and employees of the federal government are prohibited from serving as electors in order to maintain the balance between the legislature and the executive.

Casting ballots for electors

4.5 At the general election in November, voters in each state cast their ballots for a party slate of electors. Normally, the ballots specify "electors for" a set of presidential cum vice-presidential candidates rather than list the individual electors on each slate. Under the "winner-takes-all" system adopted by all but two states,⁶ the electors on the party slate which wins the most popular votes in a state become the state's electors. In effect, whichever presidential ticket wins the largest number of popular votes in a state wins all the electoral college votes for that state, no matter how slim the margin is. In particular, in four previous elections, the electoral college elected a President who received fewer popular votes than his opponents. The most recent example was the 2000 election at which George W. Bush was elected.

⁶ The two states are Nebraska and Maine where the proportional allocation of votes is adopted. For example, Maine has four electoral votes and two congressional districts. It awards one electoral vote per congressional district and two by the statewide, "at-large" vote. It is possible for Candidate A to win the first district and get one electoral vote, Candidate B to win the second district and get one electoral vote, and Candidate C, who finished a close second in both the first and second districts, to win the two at-large electoral votes. See http://usinfo.state.gov/dhr/democracy/elections/elect_college/faq_electoral_college.html.

Nomination of presidential candidates

4.6 Individuals can stand as presidential candidates, so can members of small political parties. Presidential candidates of the two major parties are nominated at the parties' national conventions attended by state party delegates chosen at caucuses, state conventions and/or primaries held between January and June of the election year.⁷ A caucus is an informal meeting of the most local form of the electoral nomination process, in which party members who live within a local precinct get together and vote for delegates who pledge to support specific presidential candidates. Those delegates represent their precinct at a county convention, which chooses delegates to attend the state convention. The delegates to the state convention, in turn, select delegates to represent the state at the national convention.⁸ Primaries are nominating elections, which can be either open or closed. A closed primary only allows registered voters who belong to a particular political party to vote, while an open one allows all eligible voters, regardless of party affiliation, in a state to vote. Primaries have become the preferred method of delegate selection in many states.

Casting electoral college votes for President

4.7 In December, each state's electors meet in their respective state capitals and cast their electoral college votes for the President and the Vice-President. The votes are then sent to Washington, D.C., where they are opened and counted before a joint session of Congress in January. The presidential candidate with the absolute majority of electoral college votes by electors is declared the President. However, as practically all electoral college votes were pledged beforehand, the meetings of such electors and the counting of their recorded votes have long rendered the electoral college votes a mere formality.

Qualifications

4.8 The presidential candidate must be a natural-born citizen of the US, at least 35 years of age, and a resident in the US for at least 14 years.

⁷ According to the Federal Electoral Commission, the date for and the type of a presidential primary held varies from state to state, depending on state statutes, party constitutions, party rules and regulations, party by-laws and delegate selection plans. In some states, a caucus may be held instead of a primary. Other states may use a combination of caucuses and primaries, see <http://www.fec.gov/pages/2004pdates.htm>.

⁸ Bureau of International Information Programs of the Department of State of the United States of America (2004).

Major functions and powers

- 4.9 The President is empowered to:
- (a) preserve, protect and defend the Constitution;
 - (b) sign or veto bills passed by Congress
 - (c) appoint cabinet members, by and with the advice and consent of the Senate;
 - (d) appoint Judges of the Supreme Court;
 - (e) be the commander in chief of the army and navy; and
 - (f) make treaties, by and with the advice and consent of the Senate.

Term of office

4.10 A presidential term is four years. Re-election for a consecutive term is permitted only once.

5. The UK

Head of state

5.1 In the UK, the Monarch (the Queen) is the head of state.

Selection method

5.2 The Monarch is selected among members of the Royal Family according to a designated line of succession.

Major functions and powers

- 5.3 The Queen is empowered to:
- (a) address both Houses of Parliament at the annual State Opening of Parliament in The Queen's Speech where the speech, drafted by the Government, outlines the Government's policy for the coming session of Parliament and indicates forthcoming legislation;
 - (b) carry out constitutional and ritual functions such as formally appointing Prime Ministers, and granting a dissolution of Parliament on the advice of the Prime Minister;
 - (c) act as the Head of the Armed Forces and the Governor of the Church of England;
 - (d) preside at ceremonial occasions;
 - (e) be the Head of the Commonwealth and Queen of other Commonwealth realms, including Australia, New Zealand and Canada.

5.4 As a constitutional monarch, the Queen is bound by rules and conventions and remains politically neutral. On almost all matters, the Queen acts on the advice of the Ministers.

Head of government

5.5 In the UK, the Prime Minister is the head of government.

Selection method

5.6 When the results of a general election are known, the Queen invites the leader of the party winning the most seats in the House of Commons to be the Prime Minister.

5.7 A general election, at which Members of the House of Commons are elected under a simple majority system, must be held at least every five years after Parliament has been dissolved either because the maximum term between elections - five years - has expired or by the Queen on the advice of the Prime Minister. Dissolution may occur at any time. The decision on when to hold a general election is made by the Prime Minister. The reasons calling for a general election vary, but generally originate from the desire of the government to continue to command a majority or to obtain an increased majority in the House of Commons for another five years.

5.8 Voting at general elections is not compulsory. Citizens aged not less than 18 are eligible to be registered as voters.

Qualifications

5.9 The Prime Minister must be a Member of either the House of Commons or the House of Lords.

Major functions and powers

5.10 The Prime Minister does not have statutory functions and powers. Conventionally, he or she can:

- (a) select and dismiss Ministers (who must come from Parliament) without parliamentary approval;
- (b) advise the Queen such as requesting a dissolution of Parliament; and
- (c) answer questions on various subjects, including the key issues of the day, from Members of Parliament every Wednesday when Parliament is sitting.

Term of office

5.11 The Prime Minister serves a maximum of five years for a term, and can be re-appointed.

6. Singapore

Head of state

6.1 In Singapore, the President is the head of state.

Selection method

6.2 The President is directly elected by a simple majority of the votes cast by Singapore citizens aged not less than 21. Both voter registration and voting are compulsory.

6.3 The presidential candidate is required to be nominated by a nomination paper signed by two persons as proposer and seconder and by not less than four other persons, all of their names must appear in any register of electors.

6.4 If only one candidate stands nominated, no poll will be held, and the candidate will be declared to be elected as the President.

Qualifications

6.5 The 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 voters;
- (d) be resident in Singapore at the date of his or her nomination for election and has been resident for periods amounting in the aggregate to not less than 10 years prior to that date;
- (e) not be subject to any disqualifications applicable to Membership of Parliament;
- (f) have no membership of any political party on the date of his or her nomination for election;
- (g) "*satisfy*" the Presidential Elections Committee (PEC) that he or she "*is a person of integrity, good character and reputation*";⁹ and
- (h) have not less than three years experience as senior officials of Singapore government agencies, or chairmen or chief executives of large Singapore companies.

6.6 The function of PEC is to ensure that presidential candidates have the qualifications of items (g) and (h) listed above. PEC consists of three members - the Chairman of the Public Service Commission who is PEC's Chairman; the Chairman of the Public Accountants Board; and a member of the Presidential Council for Minority Rights nominated by the Council's Chairman. PEC's decision as to whether a candidate has fulfilled the eligibility requirements "*shall be final and shall not be subject to appeal or review in any court*".¹⁰ In the 1999 presidential election, as two of the three candidates were regarded by PEC as unqualified, the remaining one was declared to be elected as the President.

⁹ See Article 19 (2e), the Constitution of Singapore.

¹⁰ See Article 18 (9), the Constitution of Singapore.

Major functions and powers

- 6.7 The President is empowered to:
- (a) appoint the Prime Minister and the Deputy Prime Minister;
 - (b) veto budgets of the Government and key government-linked bodies;
 - (c) veto the appointments of Government nominees to key posts; and
 - (d) examine the Government's exercise of its powers under the Internal Security Act and religious harmony laws and in investigations into cases of corruption.

6.8 Before exercising his or her major powers, the President must consult the Council of Presidential Advisors (CPA). CPA comprises six members, of whom two are appointed by the President at his or her discretion, two are appointed by the President on the advice of the Prime Minister, one is appointed by the President on the advice of the Chairman of the Public Service Commission, and one is the Chief Justice's nominee. CPA members are appointed on a six-year term for their first appointment, and are eligible for further terms of four years each.

Term of office

- 6.9 The President holds office for a term of six years, and can be re-elected.

Head of government

- 6.10 In Singapore, the Prime Minister is the head of government.

Selection method

6.11 Following a parliamentary general election, the leader of the majority party or the leader of a majority coalition in Parliament is usually appointed the Prime Minister by the President.

6.12 Members of Parliament are elected by universal suffrage from 42 single-member constituencies and 13 group representation constituencies. The voting is compulsory for all citizens above the age of 21. With the intention of ensuring multi-racial parliamentary representation, the group representation constituencies elect a team of three members, at least one of them must be Malay, Indian or a member of one of Singapore's other minorities.

Qualifications

6.13 The Prime Minister must be a Member of Parliament who is regarded by the President as being "*likely to command the confidence of the majority of the Members of Parliament*".¹¹

Major functions and powers

- 6.14 The Prime Minister is empowered to:
- (a) advise the President to appoint other Ministers from among the Members of Parliament to form the Cabinet, summon the Cabinet and preside at its meeting;
 - (b) assign responsibility for any department or subject to Ministers;
 - (c) advise the President to appoint key posts such as Parliamentary Secretaries (from among the Members of Parliament to assist Ministers), Permanent Secretaries, the Attorney-General, Secretary to the Cabinet, two members of the Council of Presidential Advisors, Judges of Supreme Court, the Audit-General, and members of important commissions; and
 - (d) request the President to dissolve Parliament.

Term of office

6.15 The Prime Minister serves a maximum of five years for a term, and can be re-appointed. According to the Constitution, if the President is satisfied that the Prime Minister has ceased to command the confidence of a majority of the Members of Parliament, he or she can declare the office of Prime Minister vacant. However, before doing so, the President is required to inform the Prime Minister or, if requested by the Prime Minister, to dissolve Parliament instead of making such a declaration.

7. New Jersey

Head of local state and head of government

7.1 In New Jersey, the Governor is both the head of the local state and the head of government.

¹¹ Article 25 (1) of the Constitution of Singapore.

Selection method

7.2 The Governor is directly elected by a simple majority of the votes cast at a gubernatorial election where US citizens who are residents of New Jersey and are not less than 18 years of age can register as voters. Both voter registration and voting are not compulsory.

7.3 According to the State Constitution, if two or more candidates receive the largest and equal number of votes at the gubernatorial election, the one receiving the absolute majority of votes of all the members of both houses of the legislature in a joint meeting held at the regular legislative session becomes the Governor.

Qualifications

7.4 The candidate must be at least 30 years of age, a US citizen for at least 20 years, and a New Jersey resident for seven years prior to the election.

7.5 In addition, no Member of US Congress or person holding any office or position of profit in New Jersey or the US is eligible to be the Governor.

Major functions and powers

7.6 As the chief of the executive branch of the State Government, the Governor is empowered to:

- (a) sign bills into law or veto them, and take care that the laws be faithfully executed;
- (b) call the legislature into a special session whenever in his or her opinion the public interest requires;
- (c) communicate to the legislature the condition of the State and recommend measures;
- (d) nominate and appoint, with the advice and consent of the Senate, key judicial officers and heads of departments, boards and commissions; and
- (e) be the Commander-in-Chief of New Jersey.

Term of office

7.7 The Governor can serve any number of terms, each of which is four years, but cannot serve more than two terms in a row. New Jersey does not have a Lieutenant Governor. In the absence of the Governor, the Senate President becomes the Acting Governor.

8. Scotland

Head of state

8.1 Scotland is not a sovereign state but an integral part of the UK. The head of state in Scotland is the Monarch of the UK whose selection method and major powers and functions are mentioned in paragraphs 5.2 to 5.4.

Head of local government

8.2 The First Minister is the head of the Scottish Executive which is the government of Scotland for all devolved matters.¹²

Selection method

8.3 The First Minister is appointed by the Monarch of the UK, upon formal nomination by the Scottish Parliament whose Members are elected by a type of proportional representation known as the Additional Member System (AMS).¹³

8.4 In the first Scottish parliamentary election in 1999 and the second election in 2003, no single party could secure a majority of seats in the Scottish Parliament under AMS. As such, the preferred candidate for the office of the First Minister was the result of negotiations between major parties in the Scottish Parliament.

¹² Scotland is administered under the arrangement of devolution. Devolution is the transfer of certain powers from the UK Parliament to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. In 1998, the Scotland Act was passed in the UK Parliament, devolving a range of powers to the new Scottish Parliament which was opened on 1 July 1999. Under the Act, the Scottish Parliament legislates for Scotland on "devolved matters" such as education, health, agriculture and justice, while the UK Parliament (which has 72 Members representing Scottish constituencies) legislates for Scotland on "reserved matters" such as foreign affairs, defence and national security. The Scottish Executive was established in 1999, following the first general election to the Scottish Parliament. The Scottish Executive is accountable to the Scottish Parliament. See Scotland Act 1998 and Scottish Executive (2003).

¹³ SP has 129 MSPs, comprising 73 constituency MSPs and 56 regional MSPs. Under AMS, each voter has two votes. The first vote is cast for a constituency MSP through the first past the post system. The second vote is for a political party (which nominates a list of candidates in order of preference), or for a candidate standing as an individual, within a larger electoral area called a Scottish Parliament Region (SPR). There are eight SPRs, each having seven additional seats in the Scottish Parliament. Within each region, a party is allocated a certain number of such additional seats, dependent upon the number of constituency seats it has won. AMS is intended to ensure that the share of seats each party gets reflects as closely as possible its level of support among voters, while allowing each constituency to have its own representatives in the Scottish Parliament. Both voter registration and voting are not compulsory. For more information, see Burnside et al. (2003), Scottish Executive (2003) and the website of the Scottish Parliament at <http://www.scottish.parliament.uk/visitor/faq.html>.

Qualifications

8.5 The First Minister must be a Member of the Scottish Parliament (MSP) who is regarded as being capable of commanding the confidence of the Scottish Parliament.¹⁴

Major functions and powers

8.6 The First Minister is empowered to:

- (a) form his or her Cabinet by determining the number and responsibilities of the Scottish Ministers (SMs), who must be MSPs, and, with the agreement of the Scottish Parliament, appoint them to office and remove them from office;
- (b) appoint, with the agreement of the Scottish Parliament, persons as junior SMs from among MSPs to assist SMs in exercising their functions, and remove them from office;
- (c) recommend, with the agreement of the Scottish Parliament, to the Queen the appointment or removal of the two Scottish Law Officers, namely the Lord Advocate (who is the head of criminal prosecution in Scotland) and the Solicitor General for Scotland (who assists the Lord Advocate);¹⁵
- (d) be responsible for development, implementation and presentation of policies of the Scottish Executive; and
- (e) be responsible for strategic relationship with the UK government and the European Union, and other external relations.

¹⁴ Clause 45, Scotland Act 1998.

¹⁵ The two law officers are not required to be MSPs. If they are MSPs, they can still participate in the work of the Scottish Parliament but cannot vote.

Term of office

8.7 As the Scottish parliamentary election is held every four years, the First Minister serves for a term of a maximum of four years, and can be re-appointed. The First Minister can at any time tender his or her resignation to the Monarch, and is required to do so if the Scottish Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Scottish Parliament.

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Appendix

Selection of Head of State and Head of Government in Selected Places

	Selection of head of state	Selection of head of government
France	<ul style="list-style-type: none"> The President is directly elected by an absolute majority of the votes cast in a universal suffrage. A presidential candidate must have the public endorsement of at least 500 local and national representatives. Presidential candidates' eligibility is monitored by the Constitutional Council. Both voter registration and voting are not compulsory. 	<ul style="list-style-type: none"> Appointed by the President, the Prime Minister is nominated by an absolute majority of all National Assembly deputies, who are elected by universal suffrage under a single-member constituency and second ballot system. Both voter registration and voting of National Assembly elections are not compulsory.
Germany	<ul style="list-style-type: none"> The President is elected by an absolute majority of the votes cast by the 1 206 members of the Federal Convention which comprises all Bundestag Members and an equal number of delegates elected by local parliaments. The Presidential candidate must not be a member of the Government or a federal or state parliament. 	<ul style="list-style-type: none"> Nominated by the President, the Chancellor is elected by an absolute majority of all Bundestag Members, who are elected by universal suffrage, with half of them returned by direct constituency elections and the other half by proportional representation. Both voter registration and voting of the Bundestag elections are compulsory.

Appendix (cont'd)

	Selection of head of state	Selection of head of government
US	<ul style="list-style-type: none"> As both the head of state and the head of government, the President is elected by an absolute majority of votes cast by an electoral college which has 538 electors who, mostly nominated by parties and/or pledged to particular presidential tickets, are directly elected by voters under the "winner-takes-all" system in all but two states. A presidential candidate may be either an independent candidate or a party member nominated to stand as candidate by his or her party at the national convention attended by state party delegates chosen at caucuses and/or primaries. 	
UK	<ul style="list-style-type: none"> The Monarch is selected among members of the Royal Family according to a line of succession. 	<ul style="list-style-type: none"> After a general election, the leader of the majority party in the House of Commons is invited by the Monarch to be the Prime Minister who must be a Member of Parliament. Voting at the general election is not compulsory. Each Member of the House of Commons representing one constituency is elected under a simple majority system.
Singapore	<ul style="list-style-type: none"> The President is directly elected by a simple majority of the votes cast at a presidential election. Both voter registration and voting are compulsory. A presidential candidate must be a person of integrity, good character and reputation, with top management experience in government agencies or large Singapore companies, as required by the Presidential Elections Committee. 	<ul style="list-style-type: none"> After a general election, the leader of the majority party or the leader of a majority coalition in Parliament is appointed as the Prime Minister by the President. The Prime Minister must be regarded as being likely to command the confidence of the majority of Members of Parliament.

Appendix (cont'd)

	Selection of head of state	Selection of head of government
New Jersey	<ul style="list-style-type: none"> As both the head of the local state and the head of government, the Governor is directly elected by a simple majority of the votes cast at a gubernatorial election. Both voter registration and voting are not compulsory. The Governor must not be a Member of US Congress. 	
Scotland	<ul style="list-style-type: none"> The Monarch of the UK. 	<ul style="list-style-type: none"> As the head of local government, the First Minister is formally nominated by the Scottish Parliament whose Members are elected by proportional representation, and appointed by the head of state of the UK.

References

1. Basic Law for the Federal Republic of Germany (1994). Press and Information Office of the Federal Government.
2. Blondel, Jean and Maurizio, Cotta (ed). (1996) *Party and Government*. St. Martin's Press, Inc. New York.
3. Bureau of International Information Programs of the Department of State of the United States of America.(2004) *Elections 2004*.
4. Burnside, R. et al. (2003) Election 2003. Available from: <http://www.scotland.parliament.uk>.
5. Constitution. The Republic of France. Available from: <http://www.assemblee-nat.fr/english/8ab.asp> (Accessed 5 May 2004).
6. Constitution and Government. Available from: <http://www.britishconsulate.org.hk> (Accessed 5 May 2004).
7. Constitution. The Republic of Singapore. Available from: http://www.oefre.unibe.ch/law/icl/sn0000_.html (Accessed 5 May 2004).
8. Davis, James W. (1998) *Leadership Selection in the Six Western Democracies*. Greenwood Press, Connecticut.
9. Federal Electoral Commission. How the Electoral College Works. Available from: <http://www.fec.gov/pages/esworks.htm> (Accessed 5 May 2004).
10. Derbyshire, J. Denis and Derbyshire, Ian D. (1999) *Political Systems of the World*. New Edition. Volume One. Helicon Publishing Ltd. Oxford.
11. Hancock, M. Donald, Conradt, David P., Peters B. Guy, Safran, William and Zariski, Raphael. (1998) *Politics in Western Europe*. Second Edition. Chatham House Publishers, Inc, New Jersey.
12. LeDuc, Lawrence, Niemi, Richard G. and Norris, Pippa (ed). (2002) *Comparing Democracies 2*. SAGE Publications, London Meny, Yves and Knapp, Andrew. (1998) *Government and Politics in Western Europe*. Third Edition. Oxford University Press, New York.
13. New Jersey State Constitution 1947. Available from: <http://www.njleg.state.nj.us/lawsconstitution/constitution.asp> (Accessed 5 May 2004).

14. Scotland Act 1998. Available from:
<http://www.legislation.hmso.gov.uk/acts/acts1998/80046--a.htm> (Accessed 2 June 2004).
15. Scottish Executive. (2003) Devolution. Factsheets. Available from:
<http://www.scotland.gov.uk> (Accessed 2 June 2004).
16. Scottish Parliament. (2003) A Devolved Parliament. Available from:
<http://www.scottish.parliament.uk/factfiles/ff1.htm> (Accessed 2 June 2004).
17. The Federal Convention. Available from: <http://www.bundestag.de> (Accessed 5 May 2004).