



19 August, 2005

The Hon Rafael Hui, GBS, JP  
Chief Secretary for Administration  
Government of the HKSAR

Dear *Mr Hui,*

**Re: BPF Paper "A Bicameral System for Hong Kong"**

The Business and Professionals Federation of Hong Kong (BPF) produced a paper on the bicameral system in March followed by a revised version in April. Both papers received very positive response and the Federation has now completed a third, fuller, extended version entitled "A Bicameral System for Hong Kong" which contains the following sections:

- Section I The Development of Representative Government
- Section II The Nine Requirements Before Further Change
- Section III Composition and Procedures of the Legislative Council
- Section IV The Law, the Legislative Council and the Next Steps
- Section V Bicameral Systems Elsewhere
- Section VI 2012: A Bicameral Solution for the SAR

The BPF is pleased to forward a printed copy of the paper, which has not yet been widely distributed, and would welcome comments and, if required, to meet you to explain and discuss our proposal. Please do not hesitate to contact us should further information be required (tel: ; fax: ; email: ).

Yours sincerely,

**(Signed)**

Connie Hui  
Secretary General

# A Bicameral System for Hong Kong

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## 兩院制的 立法機關

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Business and Professionals  
Federation of Hong Kong  
香港工商專業聯會

# A Bicameral System for Hong Kong

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## 兩院制的 立法機關



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Federation of Hong Kong  
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# Contents 目錄

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<b>Section I</b>	
The Development of Representative Government .....	1
<b>Section II</b>	
The Nine Requirements Before Further Change .....	7
<b>Section III</b>	
Composition and Procedures of the Legislative Council .....	12
<b>Section IV</b>	
The Law, the Legislative Council and the Next Steps .....	18
<b>Section V</b>	
Bicameral Systems Elsewhere .....	23
<b>Section VI</b>	
2012: A Bicameral Solution for the SAR .....	31
<b>第一章</b>	
代議政制的演進 .....	40
<b>第二章</b>	
作出修改與九點因素 .....	43
<b>第三章</b>	
立法會的組成和程序 .....	45
<b>第四章</b>	
有關法律、立法會及具體步驟 .....	48
<b>第五章</b>	
其他地區的兩院制 .....	51
<b>第六章</b>	
解決之方——兩院制 .....	56

## **Section I: The Development of Representative Government**

1. If you look back fifty years in the history of Hong Kong, you will see a different landscape, full of people differently employed. We have had our measure of good fortune; difficulties have been overcome and things have always turned out better than we could have hoped. But during this period, because of the special circumstances of Hong Kong, representative government developed at a measured steady pace, carefully along somewhat unorthodox lines in response to underlying circumstances, particularly in regard to the looming question of 1997, and it succeeded in combining change with stability. In 1985, following agreement between the Governments of Great Britain and China, preparations were made with the passing of a Basic Law in 1990, to describe in detail the constitutional arrangements for Hong Kong after its return to China in 1997.
2. Nineteen years before that, in 1966, a government Working Party produced a report on how local administration might develop and, inevitably, because these were colonial times, looked to Britain for a paradigm. The Working Party report was overtaken by the disturbed circumstances and events at the end of the sixties and was quietly forgotten. Thereafter development of representative government was diverted into different channels instead of following the elective process and creation of District Councils as

suggested by the Working Party. These channels involved encouraging greater popular participation in public affairs by the formation of many government advisory committees and boards and the opening of district offices in each of the city districts. Legislative Council was also enlarged and made more representative by the deliberate inclusion of many more appointed members drawn from different sectors of society - architects, engineers, accountants and so forth.

3. Meanwhile the masses of people who moved into the new satellite towns in the New Territories had nobody to represent them except village committees. Starting from 1977, District Advisory Boards were appointed to support the work of "departmental officials across the whole spectrum of local administration through discussion and advice." These refreshing initiatives were, however, insufficient. There were questions from some members of the British Parliament as to why Hong Kong was not taking further steps to increase representation. Universal primary school education had been introduced in 1971, Hong Kong generally was becoming a more sophisticated international community. Society was changing and, in response to this changing scene and in anticipation of future demand, a government paper in 1981, "District Administration in Hong Kong", proposed that one third of the members of these District Boards should be elected by popular vote. Elections were totally unexpected by the general public.

They came without forewarning but, after the initial surprise, were generally welcomed.

4. With the inclusion of elected members in District Boards, Hong Kong was taking a decisive step forward in political development. All persons over the age of 21 with three years of residence were enfranchised and this expansion of democracy was matched by the terms of reference of the District Boards which, instead of putting members in the legal straitjacket of conventional local government, encouraged members to discuss any matters affecting local well being. Hong Kong was crossing the river feeling the stones as it went along.
5. However, the 1981 White Paper stated emphatically that, for the time being, the status quo of the Executive and Legislative Councils would not be changed "and should evolve, as in the past, within the imperative of stability which the special circumstances of Hong Kong require." Three years later in 1984, just before the signing of the Joint Declaration between Great Britain and China, a further government paper was published, which built on what had already been achieved.
6. When introducing these next steps, the Governor, Sir Edward Youde, said, "Our present system of Government operates on the basis of consultation and consensus. This unique system

has developed around the representation of the views of the community in two ways: through the representation on the one hand of regional and district interests" and when speaking about Legislative Council, "through the representation of occupational interests such as commerce and industry, law, education, medical and social services..... These two parallel approaches allow time for debate and dissent.....synthesizing the views of geographical and functional constituencies." A gradual approach was therefore proposed so as not to undermine, with the possibility of political agitation, our position as an emerging international industrial, commercial and financial centre. Change, it said, was inevitable but should take place gradually.

7. The 1984 paper went on to propose election of functional representatives rather than their appointment by the Governor, and that members should be elected by their parent organizations and professional bodies. This change from appointment to election is significant in that it marked the start of the subsequent development of the functional constituency concept as an integral part of Hong Kong's political system and whose future role is discussed later in this paper.
8. Meanwhile in order to reflect its growing importance in public affairs and to manage its increasing workload, Legislative Council was expanded from 25 to 44 members in 1980 and to 56 in 1985.

The consequence of this was that Government officials who were members of Legislative Council were now outnumbered by non-official members of the public.

9. In 1987, a further government paper devoted many paragraphs to the role of functional constituencies, and, in commenting on the various views that had been expressed about their role, noted that most contributors favoured the retention of this method for selecting some members of the Legislative Council. The pace was quickening and in 1991 direct elections were proposed for 18 seats of the Legislative Council in addition to the 21 elected functional constituency representatives.
10. From this brief chronicle of event it can be said that far from standing still, at intervals of three or four years Hong Kong was moving forward to develop its own system of representative government.
11. Arriving in 1992, a new Governor, Christopher Patten, presented proposals for further development of the representative system ostensibly to prepare for the return of Hong Kong to the Government of the People's Republic in 1997. He proposed to abolish all the appointed seats in the District Boards and to fill the nine seats to make up the balance of 21 functional constituencies with functional seats which would include the total workforce of

2.7 million based upon the broad industrial groups of the Hong Kong Standard Industrial Classification used for statistical purposes. It was unfortunate that no precise definition of functional constituencies had been included in the Basic Law. Everyone knew what they were because functional constituency members had regularly been referred to as representing associations and professions, indeed from the outset when introducing the concept during a speech to the Legislative Council on 18 July 1984, the Governor, Sir Edward Youde, had said, "by this we mean organizations." The functional constituencies proposed in 1992 went far beyond the boundaries of organizations and were certainly not envisaged by the authors of the 1990 Basic Law. The Governor's proposals provoked a strong reaction from the Chinese Authorities and were to have serious consequences in 1997. They led to the abandonment of the "through train" whereby those elected to the Legislative Council before 1997 had an opportunity to carry on after the return to China. Legislative Council was dissolved and a caretaker Provisional Legislative Council was subsequently formed until fresh elections could be held.

12. In the years which followed 1997 further changes have taken place in the balance between functional and directly elected members and there are now 30 directly elected members of the Legislative Council elected using a list system and 30 functional members.

## Section II: The Nine Requirements Before Further Change

13. Our Basic Law holds out the promise of Legislative Council elected by universal suffrage from 2007, but before this can eventuate the Standing Committee of the National People's Congress has indicated that the SAR has to fulfil 9 conditions as follows:

- i) according to the Basic Law, any amendments can only be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the NPCSC for approval or for the record;*
- ii) any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated;*
- iii) the appointment of the Chief Executive by the Central Authorities is substantive. No proposed amendments shall affect the substantive power of appointment of the Central Authorities;*
- iv) any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive and*



*must not deviate from this principle of design. They should aim at perfecting the executive-led system, and should not lead to a deterioration of the co-ordination problem of the current relationship between the executive authorities and the legislature;*

*v) development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast. The progress should accord with the actual situation in the HKSAR, in order to preserve its prosperity and stability;*

*vi) when considering the actual situation, public opinions, as well as other factors, including the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of "One Country, Two Systems" and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature, must be taken into account;*

*vii) any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels;*

*viii) any proposed amendments should ensure that consideration would continue to be given to the interests of different sectors of society; and*

*ix) any proposed amendments must not bring about adverse effect on the systems of economy, monetary affairs, public finance and others as prescribed in the Basic Law.*

14. The Basic Law holds out the promise of a Legislative Council elected by universal suffrage and while there are continuing calls for universal suffrage in 2008, the ruling by the Central Authorities quoted above was issued in keeping with the principle of gradual progress and stable government. In accordance with this and other statements by the Central Authorities, the elections for the Chief Executive in 2007 shall be limited to a broadening to include more people in the process but the election will not be thrown open to universal suffrage. Similarly, with regard to elections for Legislative Council in 2008 a change to a fully directly elected Council has been ruled out. Instead the electoral colleges of the functional constituency members may be modified and improved, while any expansion of the Legislative Council to cope with an

increasing workload must be evenly balanced between directly elected and functional members.

15. Legislative Council will therefore enter the next electoral term of four years ending in 2012 with the same even balance between functional and directly elected members and the voting system prescribed in the Basic Law.

16. To sum up, beginning in 1966 changes have taken place at a steady pace in the representative nature of the Government of Hong Kong. Meanwhile, the population has doubled from 3.4 to 6.8 million. Satellite towns in the New Territories have been established. Industry which was a strong pillar of the economy during the early part of these forty years has migrated to China and the service sector has largely taken its place. Hong Kong started the period with one university, it now has seven. Most significant of all, following the 1984 agreement between Britain and China, Hong Kong's transition to China's rule in 1997 has been smoothly achieved and Hong Kong continues to enjoy its own special characteristics and way of life.

17. The following sections describe the parameters set out in the Basic Law within which the Legislative Council has to work and explore the possibilities for a further step forward with the introduction of a bicameral system by separating the functional and directly elected members into two chambers in line with the system adopted by many legislatures around the world.

### Section III: Composition and Procedures of the Legislative Council

18. The Agreement between the two Governments described in broad detail the main features of Hong Kong's governance, its core values, its civil society and way of life. Hong Kong needed its own legislation and almost before the ink was dry on this Agreement, work began to set out in considerable detail these arrangements in a Basic Law promulgated in 1990.
19. The works of drafting the Basic Law was completed after extensive discussion over a period of five years by a Joint Committee of Hong Kong and Mainland members with the help of a Consultative Committee to the Basic Law drafting members and the publication of drafts for public comment. We are concerned in this paper with those sections of the Basic Law which deal with the formation and procedures of the Legislative Council.
20. Article 68 of the Basic Law describes the method for forming the Legislative Council as follows:

*"The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage."*

21. The detail of and specific method for the formation of the Legislative Council is carried in Annex II of the Basic Law in accordance with the following words from the third paragraph of Article 68 and Annex II as follows:

*"The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures."*

Annex II describes this as follows:

*"The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term. In the first term, the Legislative Council shall be formed in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region". The composition of the Legislative Council in the second and third terms shall be as follows :*

<i>Second term</i>	
<i>Members returned by functional constituencies</i>	30
<i>Members returned by the Election Committee</i>	6
<i>Members returned by geographical constituencies through direct elections</i>	24"

The composition of the Legislative Council in the third and subsequent terms removed the members elected by an Election Committee, so that Legislative Council consisted of two numerically equal parts of directly elected and functional members.

<i>"Third term</i>	
<i>Members returned by functional constituencies</i>	30
<i>Members returned by geographical constituencies through direct elections</i>	30"

22. Annex II then goes on to delegate the procedures for election to the Government of the SAR to decide, specify and thereafter to be passed by the Legislative Council as follows:

*".....The division of geographical constituencies and the voting method for direct elections therein; the delimitation of functional sectors and corporate bodies, their seat allocation and election methods..... shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council."*

The following paragraphs in Section II of Annex II set out the procedures for voting on bills and motions:

*"Unless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions :*

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

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

Further development of the formation and method after 2007 is dealt with in Section III of Annex II as follows:

*"With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of*

*all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record."*

23. The description of the voting method set out in Annex II Section II above is virtually a bicameral system within the working of the Legislative Council. This is not dissimilar from the description of governments of other countries with a bicameral system, where it is usual to refer to the system as a whole by a term which embraces both parts of the system. Hence, in the USA, Congress refers to both the House of Representatives and the Senate. Parliament is a word used generally when describing legislatures which refers to the whole, the upper and the lower house. Using this analogy the term "Legislative Council" could be considered to be the Council acting as a whole that is to say, the legislature, and the separation of the directly elected members and the functional members into two chambers could be similarly regarded, jointly they would consist of the Legislative Council as a whole and, in other words, they would be the legislature of the SAR. If this line of reasoning is followed, then any amendment to the method of voting on bills and motions and the procedures to be followed may be agreed in accordance with the provisions of Section III of Annex II of the Basic Law (see para 22 above). Similarly the distribution of seats as between functional and directly elected members can be dealt with under this provision.

24. Thus the separation of the Council into its two component chambers, functional and directly elected, for the purpose of managing its business envisaged by the adoption of a bicameral system is a matter which can be agreed in accordance with the provisions under Section III of Annex II.

25. The following section will give a brief description of how a bicameral system works and benefits the legislative process in a number of countries.

#### Section IV: The Law, the Legislative Council and the Next Steps

26. Following elections for the Legislative Council in 2008, the Council will have an even number of seats each for directly elected and functional members. The Council may be bigger but the number of seats will be divided equally. This will obtain until the next election in four years times 2012. What should be the next step forward in our gradual and orderly progress? How are we to meet a requirement that two-thirds of the Legislative Council have to agree to any step forward and to any amendment? How is any change going to meet the nine requirements of the Central Authorities?
27. The second of those requirements is that any amendment must comply with the design and principle of the political structure. The principle is an executive led and accountability system; the design must ensure that different sectors and interests of society are represented and that there must be no adverse effect on the system of the economy and finance, i.e. a balanced budget and financial prudence. We are moreover encouraged further to consolidate the executive led system.
28. Although some of the steps needed to achieve a consolidation of the executive led system are outside the scope of this paper, for the sake of completeness it can nevertheless be suggested that

the structure and functioning of the executive itself needs to change in order to strengthen its position. The so-call "Ministerial" system has not been developed to cover the whole range of government activity. Principal officials are poorly supported with subordinate staff and have no Deputies. The links between Principal Officials and policy advisory committees and commissioners could similarly be strengthened. Consideration could be given as to whether the Chief Executive should continue to be independent of a political party and to the links between the Executive and Legislative Authorities and so forth.

29. The Basic Law confers certain powers on the Chief Executive in respect of bills passed by the Legislative Council. If they are incompatible, he may pass the bill back for reconsideration, or if the Council refuses to pass the budget or any important bill, he may dissolve the Council having consulted his Executive Council (Basic Law Articles 49 & 50).
30. The function and work of the Legislative Council covers all the functions of normal governments elsewhere and members of the Council may introduce bills provided they do not relate to public expenditure or the political structure. The Chief Executive must consent before bills relating to government policies are introduced (Basic Law Article 74).

31. Annex II Section II of the Basic Law also sets out the procedures for voting on bills and motions. Bills introduced by the Government require a simple majority; but bills, motions and amendments introduced individually require a simple majority separately in each of the two sections, directly elected and functional constituency halves, of the Legislative Council. The articles mentioned above are relevant to the need for and functioning of a bicameral system.

32. How are we to move forward bearing in mind the nine requirements and the Articles of the Basic Law described above? We must not derogate from the executive led system, we must make sure that different sectors of society are represented. The changes permitted by the Central Authorities in 2007 strengthen the support for the representation of different sectors of society, the functionals, by emphasizing their equality with directly elected members. The voting system described in Section II of Annex II also keeps a firm grip on the directly elected members. How then can we take a gradual step forward? Nothing should be done to weaken the power of the executive nor should the representation of different sectors and their voice be quietened to an insignificant whisper. The BPF believes that this question can be answered by introducing a true bicameral system.

33. The implementation of a bicameral system, two chambers, would involve completing the separation of responsibility implicit in the present separate majority voting system on individual bills and motions in the Legislative Council. The Legislative Council collectively would consist of two chambers, a House of Representatives and a Senate of functional members.

34. Election for members of its two chambers would follow whatever modifications are introduced and implemented following the current review.

35. But if the first chamber of direct, elected members is separated from the functionals, there would however be no longer any need it to be the same size as the second chamber. Indeed, since it would have the task of filling the membership of the panels and committees, it would need to have more than the present 30.

36. The first chamber would sit and debate separately. This will encourage more responsible administration and will enable the executive to establish a more direct communication with its representatives.

37. The second chamber would act as a check and balance. Bills would pass from the first chamber to the second for scrutiny and possible amendment. The Bill with or without amendment would return to the First Chamber. If the amendments were not accepted in whole or part, the Bill would return to the Second Chamber for further discussion and so on.

38. In the following pages we discuss how the system is working in countries which have experience of how the system affects the conduct of public affairs and why they continue to retain and respect the system.

## Section V: Bicameral Systems Elsewhere

39. A value common to bicameral systems in whichever part of the world they are is that the second chamber is able to apply a check to the work of the first chamber, to correct mistakes and oversight in the drafting of legislation, and to exert a steadying influence on policies and motions conceived in the first chamber, to allow for second thoughts and to admit wider community involvement. There will be differences of view and approach between the two chambers but it is not a closed door situation, differences may be and are ironed out by exchanging views which shuttle between the two or if necessary they can be resolved by a joint conference of both chambers.

### USA

40. Practical politics produced the American Senate and called for two legislative Chambers in 1788. Congress is the collective noun used in the United States of America to describe the two chambers of government, the Senate and the House of Representatives (the House). Senators are chosen by the separate States of the Federation by open election, they stand for an election which tends to attract middle aged, well-off candidates who are drawn generally from the among lawyers, business and banking.

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\*The content of this section has drawn much of its information from "Senates, Bicameralism in the Contemporary World" edited by Samuel C. Patterson and Anthony Mughan and its nine individual contributors. Published by the Ohio State University Press, 1999.



41. While the political system is dominated by two main parties, the directly elected President may not necessarily command a majority of support in the Senate or the House or both. But even with majority support, Senators may, nevertheless, take a different view of matters from the House and a large and cohesive minority may exert considerable power and use the power of the Senate to delay the passage of legislation and the policies and appointments of Government. Senators of the same party may indeed lack strong electoral ties with the President. The Senate is smaller than the House and, because of its numerous committees, Senators are kept busy. Senators are more in the public eye, and use it to publicise problems and, since they come from a different base of representation, promote their own solutions. The Senate may contribute to gridlock by obstruction and filibustering. For all that, the Senate occupies a special place in the American Constitution and although it has changed over time, the framers of the Constitution perceived bicameralism as guarding against a dangerous concentration of power in the House of Representatives. The Senate has remained for well over two hundred years and so it will remain. (Barbara Sinclair)

#### Canada

42. The Canadian Senate has a total of 104 members who are appointed by the Governor in Council, in effect the Prime Minister,

and retain their seats unless they resign or until the age of seventy-five. "The powers of the Senate are coequal with the House of Commons with the exception that bills for appropriating public revenue or for imposing a tax must originate in the Commons." Legislation may originate in either chamber but in practice most laws are introduced in the Commons. The Senate may amend legislation and may also reject it but this power, with few exceptions, in practice is not invoked. In recent years, the fact that the Senate has had a different political coloration from the Commons has led to prolonged dispute between the two chambers and the Senate became a thorn in the flesh for the Government. The system whereby the members of the Senate are wholly appointed is seen by commentators as being at the root of the problem and there have been calls for reform but agreement on the nature of reform has not been achieved. (C.E.S. Franks)

#### France

43. Bicameralism was instituted in France in 1795 as a result of the excesses of the single house in the final days of the revolution of 1789. Since then it has had periods of power and of decline as the nature of government and society has changed. It was designed to ensure that "reason prevailed over passion and time and reflection over immediate action." The Senate cannot be

dissolved. Senators are elected for a period of nine years and a third of its membership is renewed every three years which provides a continuity of work and the legislative process. The Senate remains in office when the Lower House is dissolved. In recent years, President de Gaulle, faced with continuing opposition from the Senate, held a referendum in 1969 drastically to alter its membership and functions. The referendum was defeated and the President resigned.

44. Legislation is shaped by negotiation between the two houses of parliament and, if need be to resolve sharp differences, the Government may appoint a committee with equal representation of both houses.
45. The Government may introduce bills into either house with the exception of financial bills. Work done by the Senate on bills which pass from the lower house "corrects inaccuracies, improves wording, and makes legislation more precise and broadly applicable."
46. The French Senate is elected by a two stage process. The first stage is the election of the country's municipal councils for a period of six years. The second stage is the appointment by the councils of delegates to a senatorial electoral college in each department (district / county) which elects members of the Upper House. Because of the lengthy tenure of office, this electoral process

introduces a degree of permanency among the members and tends to conservatism. Municipal councilors nearing the end of their term will elect a third of the senators for their department who in turn go into office for 9 years. Another element encouraging conservatism is the age requirement which requires Senators to be at least aged thirty five. (Jean Mastias)

### **Australia**

- 47.<sup>11</sup>The Constitution of 1901 established a bicameral parliament consisting of a House of Representatives and a Senate with virtually equal powers. The Senate now is composed of seventy-six members elected for a six-year term<sup>11</sup> by the separate states and territories of the nation. Senators are now elected by the single transferable vote in multi member constituencies as distinct from the single member preferential voting used in elections to the House. Proportional representation thus allows minor parties and independents to exercise considerable power in the legislative process.
48. The Senate is half the size of the House of Representatives. It cannot introduce money bills or amend tax bills or supply bills for the "ordinary annual services of the Government" and requires deadlock between the two houses to be resolved by a joint sitting. Although outnumbered, the Senate has the power to return "any proposed law" with a request for amendment. This may result in

the deadlock procedure which involves a three-month interval before the Senate tries again and in the event of further deadlock there is a dissolution of both chambers and a fresh election before a further joint sitting can be convened. However, it seems that the danger of gridlock has been mitigated to some extent by reference to Senate of committee before the passage of legislation by the House. Question time in the Senate provides another opportunity for Senators to exercise their muscles but strict rules are imposed on the length of questions and the reply by ministers. Questions are limited to one minute and replies to four and lead to lively exchanges. The introduction of proportional representation into elections to the Senate permitted the representation of minor interests who, living between the power of the two main parties of government, have been able to exercise destructive or obstructive bargaining power and led the former Prime Minister Keating to describe the Senate as a "spoiling chamber..... usurping the responsibilities of the Executive drawn from the representative chamber," and "simply holding any government to ransom." "Challenging the traditional model with its implied right to untrammelled rule by the party holding power as the government of the day. Nevertheless the Senate remains as an integral part of the system." (John Uhr)

## Ireland

49. The Seanad (Senate) of Ireland is composed of sixty members of whom eleven are nominated and forty-nine elected. The nominated members are nominated, with their prior consent, by the Prime Minister. Three from each of the National University and the University of Dublin. Forty-three are elected from five panels of candidates representing:
- (i) National Language and Culture, Literature, Art and Education and professional interests;
  - (ii) Agriculture allied interests, and Fisheries;
  - (iii) Labour;
  - (iv) Industry and Commerce including banking, finance, accountancy, engineering and architecture;
  - (v) Public administration and social services, including voluntary social activities.
50. Bills other than money bills may also be initiated in the Senate and may be passed to the House. A bill passed by either House and accepted by the other is deemed to have passed. Money bills are sent to the Senate for recommendation within twenty-one days and may be passed with or without acceptance of the recommendation. Longer periods are allowed for the consideration of other bills but after the expiry of the stated period shall be deemed to have passed. (from the Government of Ireland website)

51. From the foregoing it can be seen that the Parliament of Ireland enjoys many similarities with the functional constituencies of the Hong Kong Government.

### General

52. The second chamber or Senate in each of these illustrations is differently composed and functions differently. However, apart from the American Senate, Senates generally enjoy less power and prestige. But as J.S. Mill writes on liberty "in political speculations 'the tyranny of the majority' is now generally included among the evils against which society requires to be on guard." It may be said that Senates are part of this guarding process.

53. For Senates to be elected by the same process which elects the other house would lead to an absurd duplication of their popular base. The second chamber must therefore represent distinctive territorial or functional groups. Their contribution is to improve government, to improve the quality of legislation, to contribute wide reflection, wisdom and different points of view. If they had not played this useful role, they would have been eliminated but second chambers continue to maintain healthy existence around the world despite the shadow of majoritarian criticism.

### **Section VI: 2012: A Bicameral Solution for the SAR**

54. "Give power to the people" and "universal suffrage" were the common cry of thousands who marched in 2003 and 2004. Reacting to these marches and cries, our national leaders called for restraint and to follow the gradual and orderly progress in political development required by the Basic Law. How, then, to meet both the need for restraint and to respond to the general wish to have a fully directly elected Legislative Council?

55. To have a fully directly elected Council in 2012 and to abolish the functional constituencies would be to leap into an unpredictable future. It would not meet the gradual and orderly criteria and would not be acceptable to the Central Authorities. There are some who say "why change the existing system", but is this really a viable alternative when there is such a persistent demand for change and when we need to make progress towards the goal envisaged by the Basic Law? Will not the demand become more strident? Is there a middle way, a means to compromise between a fully directly elected Legislative Council and the need for restraint, to hear the popular voice, and to make gradual progress but also to respond to the strictures of the nine requirements referred to in Section II above; to ensure, in the words of the Central Authorities, that the management of Hong Kong's Government should remain in the hands "of all sectors of society"? The real question to ask is

whether conflict between popular demand and gradual and steady progress can be avoided. The answer is that it can.

56. The National People's Congress has declared that any changes to the election of the Legislative Council made in 2008 must protect the equal balance between the directly elected and functional constituencies and maintain the separate voting system of the Legislative Council. This clearly indicates a desire, at least for the immediate future, for a continuing role for vocational and functional representatives. Opinion surveys show that Hong Kong people's views are mixed or even contradictory, for while there is a strong wish for direct elections there is also support for the retention of functional constituencies!

57. Many countries have had to face a similar dilemma when developing their democracies, to find a balance between a directly elected legislature and the long term interests of the nation, to provide a necessary check to extremism and to give time during the legislative process for the whole community to think things out clearly. Their answer often lay in having a representative system consisting of two chambers.

58. A two-chamber system was in fact proposed for Hong Kong during the last stages of drafting the Basic Law, but there had already been five years of drafting and the proposal was made too late for it to be properly evaluated.

59. Would a bicameral system provide a solution to our dilemma - the need for gradual change and the call for immediate universal suffrage? Would a bicameral system merely lead to deadlock between the two chambers and to further procrastination in getting things done? We have time now before 2012 to examine how bicameral systems work elsewhere (previous sections have given an introduction to some of them), and how this system could lead to a more thorough examination of the issues before the community and the Government. It could lessen the tension between the two categories of members, directly and functionally elected. It could, if properly structured, lead to greater efficiency and expedition in the conduct of government business.

60. Because of these qualities, two chambers, far from being obsolete or outdated, are found in more than seventy large and small countries around the world - the USA, Canada, Brazil, Australia and the new nations of Eastern Europe, to name but a few. Indeed of some countries which abolished them, 11 have since reinstated them and in 14 nations new second chambers have been created. Of the seventy countries with two chambers, each has adapted them to suit particular circumstances and there is no unanimity in

their composition. Many have arisen from the need to give elected representation to the interests of separate federated States or Provinces. But this is not a hard and fast rule. In some countries the members are appointed, in others the members are based on vocational categories and in others there is a mixed system. It is also interesting to note that even the separate states of federal governments often themselves have a bicameral legislature, e.g. all but one of the United States of America have bicameral systems.

61. Hong Kong has had representation elected by function or vocation in the Legislative Council since 1985. Later, when the Basic Law was completed in 1990, functional representatives continued to be included and they have since become embedded in the governance of the HKSAR. As their number has grown, the composition of FCs has become imprecise. Some professions are represented, others are not, some sectors such as women's organisations are not represented at all, and the inclusion of corporate, rather than individual electors, has been widely criticised. The system therefore has its critics both on legal and ideological grounds. Hopefully, improvements to remove some of the outstanding flaws and objections will be made in time for the next election in 2008.

62. Taking these factors into consideration, we believe the response to the popular cry to have a wholly directly elected Legislative

Council lies in giving the directly elected members of the Council, who would represent parties or who are political independents, a chamber separate from the functionals, and to create a second chamber for the vocational or functional representatives.

63. At present Legislative Council consists of 60 members, 30 directly elected, and 30 functionally elected. As it is, the 60 are hard put to cope with legislation, their work as members of policy panels, special committees and so forth. With the functional representatives moved into a second chamber for the remaining number of directly elected members to perform efficiently will need their present number of 30 to be increased to 40 or more. The number of functional representatives who move into the second chamber may also need to be increased so as to elect separate representatives from those sectors which are now grouped together, e.g. sports and culture, and others who are not represented at all, e.g. Green groups. It may be desirable, too, following overseas experience, to create an Appointments Committee to elect and appoint some distinguished persons to the second chamber or to increase its representativeness in some other way, e.g. regional and university representation. This is clearly a matter for further consideration.

64. It is a general pattern of bicameral systems that the first chamber is larger than the second. This is not only a reflection of the amount of work to be done but results from the nature of the

respective chambers. The second chamber or senate is a place literally to allow for second thoughts to be given to bills and motions passed by the first chamber, to give careful scrutiny, to appoint an expert committee, to seek wider consultation, if necessary to propose amendments to legislation and then to refer the findings of their deliberations back to the first chamber. Ample time would need to be given to the second chamber to conclude its deliberations. The time needed would depend on the nature of the business involved.

65. The question would undoubtedly arise of how to deal with a lack of agreement between the two chambers. There are various ways to do this. It can be done for example by giving the second chamber the power to seek additional time, by appointing a joint committee of both chambers, by providing for bills to shuttle between both chambers until agreement is reached and so forth. Some may say that there will be gridlock but this criticism ignores the dynamics of the situation, the discussion which will take place in the community and the role of the media will play. An improved "ministerial" system, an improved election formula for the election of the Chief Executive, and the development of organic links between the Legislative and Executive Councils will also effect the way in which situations will play out. The whole environment of governance will have changed. It is not suggested therefore there would be a need for the second chamber itself to be given a general right of veto nor would it be desirable.

66. There may be constitutional matters and others which impinge on the powers of the Central Authorities, for these the second chamber could be given the power to exercise a special veto. For other matters, if after thorough debate in both chambers, the unusual circumstances arise that there is final deadlock between the two chambers, reserve powers to make a final decision could be given to the Chief Executive and his Executive Council. The question of the power the second chamber would exercise is important and will require careful examination, here the experience and practice of other second chambers may be helpful. These are practical matters and are capable of solution and should not detract from the general thrust and desirability of freeing the first chamber from the functional representatives and the advantages of the second chamber concept.

67. An additional factor in its favour is that the members of the second chamber, being less in the public eye, would be able to concentrate more on their vocational interests and the details of legislation and also to be concerned about the wider issues of the constitution and human rights.

68. This, then, is a way to meet the need to make gradual and orderly progress, by emulating procedures which are common to many democracies, but to adapt the structure to suit Hong Kong. A second chamber of the kind described would preserve and provide a better check and balance than the present system, in separating

the two components it would help to reduce tensions and dissatisfaction created by the present voting system which requires a separate majority from both the directly elected and functional members for the passage of motions, bills or amendments introduced by individual members. Having a fully elected and some what enlarged first chamber in itself will be a big step forward and will go some way to meet popular demand for universal suffrage.

69. 2012 should not be the end of this evolution, the changes proposed represent a significant step forward and, no doubt, as we move forward thereafter, further modifications can be made. The ideas have previously found support from many commentators but have been taken no further, possibly because of changes may be needed to be made to the main body of the Basic Law. However the changes proposed herein may well fall within the powers conferred by the Annexes of the Basic Law. Some commentators may raise objection even to these proposals, arguing that they are too conservative, we would repeat that some countries, who previously abandoned such a system, have reverted to it, and many others have adopted it, while many other mature democracies, with very many years of experience in democratic institutions, still keep the bicameral system alive and in use.

70. Hong Kong's democratic development is at an early stage, and adoption of a bicameral system would amount to gradual and orderly progress towards greater democracy, while continuing to maintain a legislative body which is representative of all sectors.

71. The BPF now puts this bicameral system forward as a practical solution to the evolution of our constitution. There will be need for further debate about the details but the essence for a middle way is there.

Business and Professionals Federation of Hong Kong  
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## 第一章 代議政制的演進

1. 沿著歷史的軌跡回到五十多年前的香港，無論社會民生或政治經濟，都會浮現一幅截然不同的景象。這些年來，香港可說是得到幸運之神的眷顧，逆境過後往往是更好的發展機遇。香港代議政制的演進卻由於其特殊背景及社會暗湧，每一階段發展都經過審慎考慮，包括九七主權移交，但我們成功地在穩中求變，並建立有香港特色的政治制度。基本法的草擬工作在1985年，中英兩國簽署聯合聲明後隨即開展，並於1990年通過，它清楚訂明了香港九七回歸後的政制發展程序。
2. 早於1966年，即中英聯合聲明簽署前19年，一個政府小組撰寫了一份地方行政發展的建議書，其建議無可避免參照了英國的模式和經驗。後因社會出現動盪，報告最終不了了之。及後，代議政制並沒有採取工作小組報告中的選舉模式及成立區議會等建議，而是朝多方向發展，通過成立諮詢委員會和在各區開設辦事處，讓更多人參與公共事務。立法會亦增加了議席，委任社會不同範疇和行業的代表加入，如建築師、工程師、會計師等等。
3. 七十年代開始，大批市民陸續遷入新界的新市鎮，但是新界原有的鄉議會及鄉事委員會未能代表他們的意見。為此，政府從1977年起，設立「地區諮詢委員會」，向新市鎮工作部門提出意見及建議。然而，這些新舉措並不足夠；有些英國國會議員質疑香港為何不進一步擴大代議制。1971年，香港實施小學普及教育，城市也更趨成熟及國際化。為順應蛻變的社會及未來發展所需，政府於1981年推出《地方行政改革白皮書》，建議成立「區議會」，其

中民選議員佔三分之一。對這突如其來的改變，市民起初感到驚訝，但隨即普遍表示歡迎。

4. 讓市民選舉部分區議會議員，是香港政制發展過程中決定性的一步。任何21歲或以上，居港超過三年的香港市民，均有投票權。區議會擺脫地方管治的傳統束縛，其職能包括任何地區事務，並鼓勵議員積極參與討論。香港政制發展正在摸著石頭過河。
5. 然而，1981年的《香港地方行政白皮書》亦強調香港環境特殊，需要一個穩定的局面，行政立法兩局仍須改變，兩局要「一如以往，按照環境的需要而演變。」三年後，1984年，亦即《中英聯合聲明》草簽前數月，政府再推出《代議政制綠皮書》，根據當時政制發展的進程提出建議。
6. 港督尤德爵士當時指出：「我們現在的政府運作是以諮詢和共識為基礎的。這獨有的制度是結合社會上兩種不同的取向而產生的：一方面是地區利益的代表……」，至於立法會「則是界別利益的代表，如工商、法律、教育、醫療及社會服務等……，兩種不同的取向並存，為不同意見和辯論創造空間……以揉合地區和功能組別的意見。」為確保香港國際工商、金融中心的領先地位不會因出現政治動盪而受到削弱，政制發展應要循序漸進，改變是不可逆轉的，但需要穩步而行。
7. 這份綠皮書的建議是功能組別議員通過選舉產生，不再由港督委任，這些議員應由所屬組織或專業團體推選。從委任到選舉是一項重要的改變，功能團體為香港選舉邁出了第一步，至今仍然是香港政制不可或缺的一環。他們未來的功能角色，會在隨後的章節討論。

8. 與此同時，由於立法會在公共事務的角色日益重要，而工作量亦不斷增加，議席在1980年由25個增加至44個，1985年再增加至56個，形成立法會內非官守議員數目超越官守議員的局面。
9. 1987年，政府再發表綠皮書，用了相當長的篇幅闡釋功能團體的角色，並回應各界的意見，表示大部份人傾向保留這種方式來選舉部份立法會議員。其後，政改步伐加快，1991年，政府建議立法會引入直選制，除了21位功能團體議員，另選出18位直選議員。
10. 從以上簡略的記要可以看到，香港政制每隔三、四年便會向前推進，逐步建立有香港特色的代議政制，絕非原地踏步。
11. 1992年彭定康出任港督，提出政改方案，表示要為香港九七回歸中國做好準備。彭定康建議區議會全面廢除委任議席，新增9個功能團體議席，並根據香港統計署採用的基本行業分類界定選民資格，把270萬勞動人口納入成為功能組別的選民。很遺憾基本法並無界定何謂功能組別。功能團體議員一直被理解為團體或專業界的代表。事實上，在開始引入功能組別這個概念時，尤德爵士於1984年7月18日在立法會一次講話中指出：「這裡指的是組織」。但1992年建議的功能團體，遠遠超過「組織」的界線，更非當年基本法起草委員的設想。彭定康的政改方案引起中方激烈反應，並對九七過渡造成嚴重的影響：連接回歸的「直通車」構想幻滅；回歸後原有的立法局被解散，全體原議員下車，由臨時立法會取而代之，直至新一屆選舉。
12. 1997年後，立法會直選及功能團體議員人數再作變動，現時兩組議員的比例均等：30位經分區直接選舉產生，30位經功能團體選舉產生。

## 第二章 作出修改與九點因素

13. 基本法承諾2007年後立法會的產生辦法可以修改，最終的目標是全體議員由普選產生。但人大常委會作出指引，指要實行普選，香港特區須符合下列九點因素。
  - i. 根據《基本法》，修改方案必須得到立法會全體議員三分之二多數通過，行政長官同意和全國人大常委會的批准或備案。
  - ii. 方案必須符合《基本法》規定。不能輕言修改《基本法》規定的政治體制的設計和原則。
  - iii. 中央對行政長官的任命權是實質的，任何方案均不能影響中央的實質任命權。
  - iv. 方案必須鞏固以行政長官為首的行政主導體制，不能偏離這項設計原則。方案須以完善行政主導體制為尚，不能導致惡化現行行政立法未能充份互相配合的問題。
  - v. 達至普選的最終目標，必須循序漸進，按部就班，步伐不能過急，要根據特區實際情況漸進，以保持繁榮穩定。
  - vi. 衡量實際情況時，必須考慮市民訴求，亦要檢視其他因素，包括特區的法律地位、政治制度發展現今所處階段、經濟發展、社會情況、市民對「一國兩制」及《基本法》的認識程度、公民參政意識、政治人才及參政團體成熟程度，以至行政立法關係等。

- vii. 方案必須有利於社會各階層在政治體制內都有代表聲音，並能通過不同途徑參政。
  - viii. 方案必須確保能繼續兼顧社會各階層利益。
  - ix. 方案不能對現行載於《基本法》的經濟、金融、財政及其它制度產生不良影響。
14. 雖然社會上要求2008年開始普選之聲持續不斷，但中央政府訂定的九點因素，原則是確保政制循序漸進地發展及維持社會穩定。2007年行政長官選舉可擴大選民範圍，把更多人納入選舉程式，但不會實行全面普選；同樣地，2008年立法會也不會經普選產生，但可以修訂改進功能團體的組成。立法會為了工作量需要增加議席的話，必須保持地區和功能兩個組別的比例均等。
15. 即是說，立法會將按基本法所述選舉方式，選出下一屆議員，直選議員及功能團體議員人數仍各佔一半，任期四年直至2012年。
16. 總括而言，香港政府的代表性從1966年起逐步轉變。與此同時，香港人口由340萬倍增至680萬，新界的新市鎮陸續建成。六、七十年代成為香港經濟中流砥柱的工業現已北移內地，服務業大致上取代了其地位。大學由一所增至七所。最重要的是，1984年中英兩國簽訂協議，1997年香港順利回歸中國，香港的特性和生活方式得以延續。
17. 隨後各章將集中探討在基本法的框架下，參考其他國家的經驗，通過實施兩院制，讓立法會直選議員和功能團體議員分別組成兩個議院，政制發展從而繼續向前邁進。

### 第三章 立法會的組成和程序

18. 中英聯合聲明對香港未來的管治，它的核心價值、社會民生、生活方式等有著詳細的描述，但是有需要把這些概念和原則化成為具體法律條文。聯合聲明墨跡未乾，工作已經開始，並於1990年頒佈了《基本法》。
19. 基本法起草委員會的成員包括香港和內地人士，經過長達五年的廣泛研究，以及在基本法諮詢委員會的協助下，完成了《基本法(草案)》，並公開徵詢意見。本文將主要探討基本法有關立法會組成及投票程序的條文。
20. 基本法第68條對立法會的產生辦法描述如下：  
「立法會的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至全部議員由普選產生的目標。」
21. 基本法第68條第三段，清楚訂明立法會產生的具體辦法需符合基本法附件二的規定。該條文如下：  
「立法會產生的具體辦法和法案、議案的表決程式由附件二《香港特別行政區立法會的產生辦法和表決程式》規定。」
- 附件二有關描述如下：  
「香港特別行政區立法會議員每屆60人，第一屆立法會按照《全國人民代表大會關於香港特別行政區第一屆政府和立法會產生辦法的決定》產生。第二屆、第三屆立法會的組成如下：

## 第二屆

功能團體選舉的議員	30人
選舉委員會選舉的議員	6人
分區直接選舉的議員	24人」

至於第三屆及以後各屆的立法會，將不再有經選舉委員會選出的議員。立法會將由數量相等的兩組議員組成：功能團體議員和分區直選議員。

## 「第三屆

功能團體選舉的議員	30人
分區直接選舉的議員	30人」

22. 附件二亦詳明選舉的程序由香港特區政府提出後，經立法會通過。

「……分區直接選舉的選區劃分、投票辦法，各個功能界別和法定團體的劃分、議員名額的分配、選舉辦法……由香港特別行政區政府提出並經立法會通過的選舉法加以規定。」

附件二之第二節闡明立法會對法案、議案的表決程序。

「除本法另有規定外，香港特別行政區立法會對法案和議案的表決採取下列程序：

政府提出的法案，如獲得出席會議的全體議員的過半數票，即為通過。

立法會議員個人提出的議案、法案和對政府法案的修正案均須分別經功能團體選舉產生的議員和分區直接

選舉、選舉委員會選舉產生的議員兩部分出席會議議員各過半數通過。」

2007年以後立法會的產生辦法和表決程序的進一步發展，附件二第三節也有明確指引：

「二〇〇七年以後香港特別行政區立法會的產生辦法和法案、議案的表決程式，如需對本附件的規定進行修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會備案。」

23. 上文引述基本法附件二第二節所詳明的投票辦法，從本質上來說，就是在立法會內實行兩院制。這和其他實行兩院制的國家的情況相若，就是立法機關的稱謂其實已概括了兩個組成部份，即兩個議院。因此，在美國，「國會」(Congress)是眾議院和參議院的統稱。而議會(Parliament)一詞亦泛指整個立法機關，即上、下議院。照此類推，「立法會」可以理解為整個議會，整個立法機關。由直選產生的第一議院，以及由功能團體代表組成的第二議院，聯合組成香港特區政府的立法機關——立法會。按照同一思維邏輯，如需對立法會法案、議案的表決方法和程序進行修改的話，可以按照基本法附件二第三節所列條文進行(即本文第22段)。同樣道理，直選議員和功能團體議員的議席分配，也可以根據這項條款來處理。

24. 因此，推行兩院制，讓立法會分為兩個組成部份——直選產生的第一議院及功能團體代表組成的第二議院，履行各自的職責，可根據基本法附件二第三節的條文作出修改。

25. 隨後的章節將扼要介紹兩院制在其他國家的情況，它們如何運作及對立法程式帶來的好處。

## 第四章 有關法律、立法會及具體步驟

26. 2008年立法會選舉後，會內的直選和功能組別成員的席位將會相等。立法會人數可增加，但席位必須平均分配，維持至四年後2012年的選舉。在循序漸進的過程中，下一步該怎樣做？如何才能取得三分之二立法會議員的支持，對立法會的產生辦法作出修改？怎樣才能符合中央政府的九點因素？
27. 中央的第二項要求指明任何修訂必須符合政治體制的設計和原則。原則是行政主導和高官問責制，而設計的宗旨是要保證社會各階層及各方面的利益都有代表聲音，而目前的經濟和金融制度不會受到不良影響，即財政預算以量入為出為原則，力求收支平衡。改動方案要以完善行政主導為尚。
28. 雖然鞏固行政主導體制的步驟，不在本文討論範圍之內，但為了更全面，我們建議對行政機關的架構和功能作出改變，以加強其地位。現時的所謂「部長制」並沒有推展到涵蓋整個政府運作的地步，而主要官員既沒有自己的班子作為支援，也沒有副手或副部長。此外，主要官員和政策諮詢委員會及其成員的聯繫同樣須予加強。行政長官是否應仍繼續獨立於任何政黨，以及行政長官和行政、立法機關聯繫等，也是值得研究的問題。
29. 基本法賦予行政長官權力，處理立法會通過的法案。如果認為這些法案不符合香港的整體利益，行政長官可以發回重議；若立法會拒絕通過財政預算案或其他重要議案，在諮詢行政會議的意見後，行政長官可以解散立法會。（基本法第四十九及五十條）
30. 立法會的職能和工作與其他地方的立法機關相若。只要不涉及公共開支和政治架構的事項，立法會議員都可以提出議案。但如要提出和政府政策有關的議案，則先要取得行政長官的同意。（基本法第七十四條）
31. 基本法附件二第二節訂定法案、議案的表決程式：政府提出的議案只需要獲得過半數通過，但由議員個人提出的議案、法案和對政府法案的修正案，則必須分別經過立法會的兩個部分，即直選議員和功能團體議員，各以過半數通過。上列基本法的條文與設立兩院制的需要及其運作有關。
32. 在符合九點因素和基本法條文的前提下，我們該應如何向前推進？我們不能偏離行政主導的體制，也要確保社會不同階層和界別都有代表聲音。中央容許香港在2007年對立法會選舉方法作出改變，條件是加強不同階層和界別的代表聲音（功能團體議員），並據此突顯功能團體和直選議員的平等關係。基本法附件二第二節提出的表決制度也對直選議員構成制約。那麼我們怎樣才能循序地向前邁進呢？行政機關的權力不應被削弱，同樣地，社會各階層的聲音和代表性也不應因此而降低。工商專聯相信，引入兩院制可以為這些問題提供答案。
33. 分組點票程序體現了功能和直選議員不同的職責。推行兩院制可以把這個「分工」安排進一步深化和制度化。立法會將分為兩個組成部份：直選議院（眾議院）和功能議院（參議院）。
34. 兩院議員的選舉將遵照現時政制檢討後所作的修例進行。

35. 但是，由直選議員組成的第一議院，其人數毋需再與第二議院相等。由於立法會眾多的小組和委員會需要直選議員參與，所以第一議院的人數有需要多於現在的三十位。
36. 第一議院獨立進行會議和辯論，將有助推動更正面的討論，以及加強第一議院和行政機關的直接溝通。
37. 第二議院發揮監察和制衡的作用。第一議院通過法案後，第二議院將進行認真審核，必要時提出修訂。修訂與否，法案都會交回第一議院。如果第一議院不接納全部或部份修訂，法案將交回第二議院進行研究，並在兩院間來回討論。
38. 以下章節，我們會討論兩院制在一些國家的運作，對公共事務產生的影響，制度為何得以保留並受到肯定。

## 第五章 其他地區的兩院制

39. 在世界各地，兩院制發揮一個共同的功能，就是第一議院的工作受到第二議院的監察。第二議院修正草案的錯漏，並在一定程度上影響第一議院提出的政策和動議，使第一議院更深思熟慮，亦有助鼓勵社會更廣泛參與政事討論。當兩院有不同意見和取向時，則通過交換意見、來回討論法案和議案，爭取共識，消除分歧。必要時，可成立聯合委員會解決問題。

### 美國

40. 為了政治上的實際需要，美國於1788年成立參議院，推行兩院制。在美國，「國會」是參議院和眾議院兩個議院的統稱。參議員由各州經公開選舉產生，參與競選的多為富裕的中年人士，一般來自法律、商業、銀行等界別。
41. 美國的政治制度雖然由兩大黨派主導，但由直選產生的總統未必能得到參議院或眾議院的大多數支持，甚至都得不到兩院的支持。即使總統與兩院的大多數同一陣線，持相反意見的少數參議員若能團結一致，仍可運用參議院的權力，延遲通過法案、政策和政府任命，發揮相當的影響力。儘管同屬一黨，參議員和總統在選舉政治上並沒有親密的關係。參議院的規模比眾議院小，但委員會眾多，議員的工作十分忙碌。參議員的一舉一動普遍受到傳媒關注，因此有能力鼓勵公眾討論問題，影響社會輿論；由於其選民基礎與總統、眾議院不同，參議員往往有自己的理念和方案。參議院拖延和

本章主要參考 "Senates, Bicameralism in the Contemporary World", Samuel C. Patterson 和 Anthony Mughan 編輯, Ohio State University Press, 1999 年版

阻撓議事進程的手段，可引致兩院僵持不下的局面，但它在美國憲法所享有的特殊地位堅如磐石。滄海桑田，但立憲者視之為防範眾議院集權危險的信念依然牢不可破。參議院制度已維持二百多年，並會繼續下去。(Barbara Sinclair)

## 加拿大

42. 加拿大參議院共有104位成員，由總理會同行政會議委任，任期直至七十五歲退休。「除了有關公共開支和開徵稅項的草案必須由眾議院提出外，參議院的權力與眾議院對等。」兩院均可啟動立法程序，但實際上大部分法案由眾議院提出。參議院有權修改甚至推翻法案、議案，但除了少數特殊例子外，參議院甚少使用該項權力。近年來，由於參議院與眾議院的政治色彩不同，令到兩院之間的分歧不斷，參議院更令政府坐立不安。有評論認為問題的根源是全部參議員由委任產生，並要求改革，但加拿大未能就改革的性質取得共識。(C.E.S.Franks)

## 法國

43. 1789年大革命後期眾議院過份激進的行為，使法國在1795年引入兩院制。隨著政府更替和社會變遷，參議院也歷經興衰。設立兩院制原意是要確保「理性蓋過感性，深思熟慮而非倉卒行事。」參議院不能解散，議員任期為九年，每三年其中三分之一的成員會進行更替，以保障工作和立法程序的延續性。即使下議院遭解散，參議員仍繼續留任。以近代為例，戴高樂總統因長期受參議院反對，毅然於1969年進行全民投票，希望大幅修改參議院的組成和功能。惟議案得不到大眾的支持，戴高樂總統因此辭職。

44. 在立法過程中兩院進行磋商，如有巨大分歧，政府可指派委員會進行調解，委員會由人數相等的兩院代表組成。

45. 除了財務議案，政府可以在任何一院提出議案。對於獲得下議院通過的議案，參議院的職責是「糾正偏差，修訂辭句，使法例更加精確及廣泛使用」。

46. 在法國，參議院需經過兩輪選舉產生：首輪投票選出市議會，任期為六年；第二輪由市議會代表委任各選區（地區或縣）的參議院大選舉團，最後由大選舉團選出參議院議員。市議員在任期快將屆滿時，會為其「選區」選出三分之一的參議員，加上議員在位時間相當長，議院因此容易趨向保守。而參議員必須年滿三十五歲，是另一個誘發保守傾向的因素。(Jean Mastias)

## 澳洲

47. 澳洲於1901年制定憲法，設立兩院制的國會，由擁有相等權力的眾議院和參議院組成。參議院共有76位成員，由全國各省和地區選舉產生，任期六年。現時參議員經多議席選區、單一可轉移制(single transferable vote)選出，有別於眾議院的單議席選區、選擇選舉制(single member preferential vote)的方式。前者議席多寡按得票比例而定，令小黨派和獨立人士有機會進入立法機關，並在立法的過程中發揮相當的影響力。

48. 參議院的人數是眾議院的一半，不可以引入涉及財務或是修訂有關稅務的法案、議案，也不可以就「一般政府年度服務」提出草案。如出現兩院僵持的局面，則需要召開聯席會議商討解決辦法。參議院雖然人數較少，但有權發回「任何草案」及要求作出修改。這可

能會啟動打破僵局的程序：參議院必需經過三個月才可再次發回法案。如果兩院仍未能取得共識，便要解散，重新舉行選舉，才可再次召開聯席會議。其實，眾議院在通過法例前可先與參議院的委員會磋商，減低造成僵局的危機。提問時間亦為參議員提供另一個發揮影響力的機會，但時間長短受到嚴格限制。提問限定一分鐘，部長答辯則四分鐘，因此一問一答，往往充滿活力。參議院選舉引入了比例代表制，使代表少數族群利益和聲音的議員在兩大政黨的中間，仍有議價能力，甚至可造成破壞或阻礙。前總理姬汀(Keating)便曾形容參議院為「嬌縱的議院…篡奪行政機關來自代表議院的權力」，「總是對政府開天殺價」，「他們其實有能力擺脫執政黨的統治桎梏，藉以向傳統模式挑戰。然而，參議院仍是制度的重要部分」。(John Uhr)

#### 愛爾蘭

49. 愛爾蘭的參議院由60名成員組成，11位經本人同意後由總理委任，49位經選舉產生。後者包括國立大學和都柏林大學的代表各三位，其餘43位則來自以下的五個組別：
- i. 民族語言及文化、文學、藝術、教育和專業界別
  - ii. 農業相關界別和漁業
  - iii. 勞工
  - iv. 工商業，包括銀行、金融、會計、工程和建築
  - v. 公共行政和社會服務，包括義務社會活動
50. 除了涉及財務的議案外，任何草案可以首先在參議院提出，再轉至眾議院。獲任何一院通過並得到另一院接納的草案，當視作獲一致通過。參議院可在21天內對涉及財務的議案提出建議，21天後，

即使參議院有異議，議案仍可當作按原文獲得通過。至於其他議案，參議院可獲較長時間討論，但如果超過限期，則視作通過。  
(摘自愛爾蘭政府網頁)

51. 由上文可見愛爾蘭國會與香港的功能組別有許多共通之處。

#### 概論

52. 上述各個第二議院或參議院的組合和功能都有所不同，但除了美國參議院外，其他參議院的權力和聲望一般都較低。但正如穆勒(J.S.Mill)在論述自由時指出：「多數人的暴政」已成為現今社會必須要防範的罪惡之一。」可以說，參議院就是防禦機制的一部分。
53. 如果參議院的選舉方式與第一議院的相同，兩院所代表的選民重複，參議院便會失去監察第一議院的基礎。因此，第二議院必須代表不同的地域或功能組別。它的作用和貢獻是改善政府施政和立法的素質，從宏觀角度思考問題，出謀獻策和提供不同意見。正正是這些原因，即使經常受到多數主義的非議批評，第二議院不但沒有被淘汰，還繼續在世界各地良好地發展。



## 第六章 解決之方——兩院制

54. 2003及2004年，數以萬計的港人參加遊行，提出「普選」和「還政於民」的訴求。國家領導人對此作出回應，呼籲港人冷靜和克制，指出香港的政制發展必須按照基本法循序漸進的原則進行。然而，如何才能一方面令社會保持克制，同時又回應大眾普選立法會的訴求？
55. 如果在2012年普選立法會和撤銷功能議席，將會是一項重大的轉變，對香港社會經濟民生等方面的影響難以預計，也不符合循序漸進的原則，相信中央政府不會接受。另一方面，有些人則認為必須改變現行制度，但社會上要求改變的聲音不絕於耳，而我們也需要朝著基本法設定的目標前進，「維持現狀」又是否真的切實可行？大眾的訴求會否變得更激烈？到底有沒有平衡折衷之道，可以既回應普選立法會的意願，也顧及保持冷靜克制的需要；既聆聽大眾的聲音，也循序漸進，並充份考慮本文第二章中的九點因素，也就是說，讓「社會各階層」均能參與管理特區政府呢？問題的核心是：大部分市民對政制發展的期望，與基本法中穩步發展的要求，兩者的矛盾是否可以避免——答案是肯定的。
56. 全國人大常委會決定：2008年的立法會選舉，功能團體和分區直選產生議員各佔半數的比例維持不變，立法會對法案、議案的表決程序（指分組點票）維持不變。這清楚表明至少在短期內保留功能組別代表的意願，而民意調查顯示港人的意願較為複雜，甚至有點矛盾：既強烈支持普選，又認為應該保留功能團體。
57. 不少國家在民主進程中也遇過類似的難題：經普選產生的議會和國家長遠利益之間若不相協調，怎樣取得平衡？如何確保議會不走向偏

激極端、以及在立法過程中怎樣讓全體市民有時間認真思考和分析問題？解決之道往往是推行具代表性的兩院制。

58. 事實上，基本法起草期間，曾有人提出兩院制的建議，但當時起草工作持續了五年，並進入最後階段，時間上已來不及作充分研究。
59. 兩院制能否成為香港的妙藥良方，解決既需要循序漸進、又存在即時普選訴求的困局？抑或會帶來兩院僵持不下、曠時廢日的局面？2012年距今仍有六、七年，我們有充裕的時間研究兩院制在外國的運作情況（之前的章節已作介紹），了解它如何使議會、政府及社會均能對種種議題進行更深入的討論。它可緩和直選及功能團體兩組議員間的緊張關係。架構建立及運作得宜的話，兩院制更可提升政府的施政效率。
60. 正正如此，兩院制非但沒有過時或被廢棄，反而在世界上超過70個大小國家，包括美國、加拿大、巴西、澳洲及一些東歐的新興國家運作，當中11個國家曾經廢除兩院制，但現在已恢復採用；14個國家則新設立了第二議院。在達70多個國家中，兩院制的具體架構不盡相同，各國根據國情制定合適的機制。很多時候，考慮因素是如何讓各州或各省的利益在聯邦議會中得到反映，但體制並非千篇一律、一成不變。在某些國家，議會代表是委任的；在另外一些國家，議會則由各行各業代表組成；也有一些國家兩者兼備。值得注意的是，很多聯邦政府下的州或地方政府也是實行兩院制的。美國各州中，便只有一個並非實行兩院制。
61. 香港立法會自1985年開始引入功能團體選舉。1990年，基本法起草工作完成，保留了功能團體代表，並將其納入為特區政府管治系統的一個組成部份。隨著功能團體議席逐步增加，議席的組成變得

混淆，有些專業界別有代表，有些沒有，某些範疇如婦女組織則完全沒有代表；團體投票人制度更被廣泛批評。功能團體選舉無論在法律上或理念上均受到非議。希望這些備受批評和不足之處，到2008年選舉時會有所改善。

62. 綜合考慮以上因素後，我們認為推行兩院制可以回應市民對全面普選立法會的訴求，讓由直選產生的議員擁有完全屬於自己的議會——第一議院。這些議員可以是政黨代表，也可以是無黨派人士。而功能團體代表則組成第二議院。
63. 現時立法會由60位議員組成，當中30位通過直選產生，30位則由功能團體選出。60位議員承擔立法及出任政策事務委員會、特別委員會成員等多重任務，工作繁重，難以應付。而根據兩院制的構思，全體功能團體議員將移往第二議院。要有效履行職務，第一議院的直選議員便有需要由30位增加至40位或以上。同樣地，功能團體議員的人數可能也要增加，以解決現時存在的一些問題，例如某些不相關的行業，如體育及文化界被歸入同一功能界別；某些界別如環保則並無代表。此外，若認為對第二議院的工作有所裨益，亦可參照外國經驗成立委員會，委任社會傑出人士為議員，或通過某些方式提升第二議院的代表性，例如加入區域或大學代表。這些構思肯定值得進一步探討。
64. 一般來說，第一議院的規模比第二議院為大，這不單是工作量的緣故，也與議院的性質有關。顧名思義，第二議院或參議院的主要職能，就是對第一議院通過的法案和議案，進行第二次認真思考，包括更仔細地審議法案和議案，成立專家小組，更廣泛地諮詢公眾，有需要時對法案和議案提出修訂，並詳列理據退還第一議院重新考

慮。因此，我們必須給予第二議院充裕的時間工作，時間長短端視法案和議案的性質而定。

65. 大家一定會問，當兩院出現意見分歧時，該如何處理？方法有好幾個，例如讓第二議院有權延遲法案和議案；成立兩院聯合委員會；或讓法案和議案在兩院來回討論，直至達成協議。可能有人會批評這將導致兩院僵持不下的局面。可是，這忽略了在上述情況下產生的互動變化，也沒有考慮到大眾討論和傳媒的角色等因素，或其他事態的發展，例如：「問責制」和特首的選舉方法會否得到改善，行政會議和立法會能否加強連繫等。屆時整個管治環境將不盡相同。因此，我們並非建議，也不認為必須讓第二議院在所有事務上均擁有否決權。
66. 但是，在某些憲制事務或與中央政府權力有所抵觸的問題上，可賦予第二議院特別否決權。至於其他事務，假若兩院在進行詳細討論後，少有地未能取得共識，可考慮由行政長官會同行政會議作最後決定。如何界定第二議院的權力十分重要，需要審慎研究，這方面我們可借鑒其他國家或地區的經驗，但這些都只是實踐上的問題，並非不能解決，不應因噎廢食，否定兩院制的精髓和價值。
67. 設立兩院制還有另一好處：一般來說，第二議院受公眾傳媒關注的程度不若第一議院，應該可以較為集中討論業界關注的問題，更留意立法細則，以及宏觀地從憲制和人權等角度考慮議題。
68. 正是這個方案，既符合循序漸進的要求，亦參照了民主國家的程序，制定適合香港的架構。前文描述的第二議院可以較現行制度更有效地發揮制衡作用。此外，現時議員個人提出的議案、法案及對

政府法案的修正案均須在分組點票中得到過半數支持，造成直選和功能團體議員的緊張關係，也引發不滿情緒。讓兩者擁有各自的議院，可以緩和這種情況。而經普選產生第一議院全體議員，並增加議席，本身已是一大突破和進步，在一定程度上回應了大眾對「普選」的訴求。

69. 當然，這不是說，香港的政制發展於2012年便行人止步，但兩院制令香港在政制演進過程中邁出意義重大的一步，並可在實踐中不斷完善。兩院制的建議曾得到不少評論員支持，但因為有機會要修改基本法的主體文件，所以並無進一步的探討。其實，可能只須行使基本法附件內的條文，便可作出實行兩院制所須的改變。亦有些評論員可能會反對兩院制，認為構思保守，但我們要再次指出，不少曾經廢除兩院制的國家已重新採用；而很多民主發展成熟、民主機構長期運作的國家，至今仍然實行兩院制。

70. 香港的民主發展仍在起步階段，採用兩院制可使香港循序漸進地在民主路上踏出一大步，也使香港的立法機關可以繼續代表社會各階層的聲音。

71. 工商專聯提出「兩院制」，為香港的政制演進提供切實可行的方案。有關建議仍需作深入詳盡的探究，但是一條兼容平衡的「中間道路」已在我們面前展現。

香港工商專業聯會

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