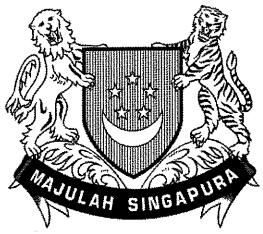
REPUBLIC OF SINGAPORE

REPORT OF THE

CONSTITUTIONAL COMMISSION

2016



Chief Justice's Chambers
Singapore

The Prime Minister of the Republic of Singapore
Singapore

17th August 2016

Dear Prime Minister,

I have the honour of submitting the report of the Constitutional Commission, dated 17 August 2016. The Commission was appointed to look into aspects of the Elected Presidency within the Terms of Reference announced by the Prime Minister's Office on 10 February 2016. The report contains the Commission's recommendations.

It has been a privilege for each of us to be entrusted with this responsibility.

Yours faithfully,

SUNDARESH MENON
Chairman
Constitutional
Commission

CONSTITUTIONAL COMMISSION 2016

LIST OF MEMBERS

Chairman:	Chief Justice Sundaresh Menon
Members:	Justice Tay Yong Kwang
	Mr Eddie Teo
	Mr Abdullah Tarmugi
	Professor Chan Heng Chee
	Mr Chua Thian Poh
	Mr Philip Ng Chee Tat
	Mr Peter Seah Lim Huat
	Mr Wong Ngit Liong
Secretary:	Mr Christopher Tan Pheng Wee
Assistant secretaries:	Mr Ramasamy Nachiappan
	Mr Shaun Pereira

REPORT OF THE CONSTITUTIONAL COMMISSION 2016

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CHAPTER 1

INTRODUCTION

1.1 On 27 January 2016, Prime Minister Lee Hsien Loong ("Prime Minister Lee") announced in Parliament that he would be appointing a Constitutional Commission to study certain issues pertaining to the Elected Presidency, obtain views from the public and recommend improvements to the system.[1] Nine Singaporeans were subsequently appointed as members of the Commission on 10 February 2016.[2]

1.2 The Commission's terms of reference ("**Terms of Reference**") were as follows:

(1) To review the qualifying process for Presidential candidacy, particularly the eligibility criteria for such candidates.

To consider whether the existing provisions in these areas are adequate, taking into account:

(i) The President's custodial role in safeguarding our financial reserves and the integrity of our public service; and

(ii) The need to ensure that those eligible for candidacy are individuals of character and standing, who possess the experience and ability to discharge these duties and responsibilities of Presidential office with dignity and distinction.

To recommend any refinements and amendments to the above-mentioned areas which are necessary in view of the considerations in (1)(i) and (ii) above.

(2) To consider and recommend what provisions should be made to safeguard minority representation in the Presidency, taking into account:

(i) The President's status as a unifying figure that represents multi-racial Singapore; and

(ii) The need to ensure that candidates from minority races have fair and adequate opportunity to be elected to Presidential office.

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1 *Singapore Parliamentary Debates, Official Report* (27 January 2016) vol 94 (Lee Hsien Loong, Prime Minister).

2 Prime Minister's Office, "Constitutional Commission to Review Specific Aspects of the Elected Presidency" <http://www.pmo.gov.sg/mediacentre/constitutional-commission-review-specific-aspects-elected-presidency> (accessed 8 August 2016).

(3) To review the framework governing the exercise of the President's custodial powers, particularly the role and composition of the Council of Presidential Advisers.

To consider whether the existing provisions in these areas are adequate, taking into account:

(i) The custodial powers that the President is entrusted with, and the Council of Presidential Advisers' central function as an independent body to counsel and advise the President on the exercise of his powers; and

(ii) The need to safeguard our financial reserves and the integrity of our public service, and ensure that decisions in these areas are made with the support of careful consideration given by a group of persons with substantial suitable experience in the public and private sectors.

To recommend any refinements and amendments to the above-mentioned areas which are necessary in view of the considerations in (3)(i) and (ii) above.

(4) To receive and consider representations on (1) to (3) above.

(5) To prepare and submit a report of the Commission's proceedings, findings and recommendations to the Prime Minister. In preparing this report, the Commission may seek legal or other professional advice and/or request for information, on any matters within its terms of reference.

1.3 The Commission held its inaugural meeting on 17 February 2016, at which it was decided that the Commission would benefit from inviting representations from the public on the important issues it had been tasked to consider. On 18 February 2016, the Commission issued a media release inviting the public to submit written feedback on any matter falling within the Terms of Reference by 21 March 2016. In the interim, the Commission held its second meeting on 2 March 2016. At the close of the consultation period, the Commission received a total of 107 written submissions. **Annex A** sets out the names of the contributors who provided written submissions, but omits the names of 4 contributors who expressly stated that they wished to remain anonymous, as well as the 1 submission which, in the Commission's view, was scandalous and defamatory. The Commission also received some written submissions after the deadline. These were considered by the Commission in its deliberations, but the names of those who contributed these late submissions have not been included in **Annex A**.

1.4 The members of the Commission reviewed all the written submissions that were

received and then held two meetings, on 7 and 12 April 2016, to discuss them. It then decided to invite 20 contributors to make oral representations to elaborate on or clarify their written submissions. In selecting the contributors who would be invited to make oral representations, the Commission was guided by the following considerations. First, there were a number of submissions which the Commission thought it would be able to better understand and appreciate if it afforded the contributors in question the opportunity to respond to questions or to clarify specific points that had occurred to the Commission in the course of reviewing the submissions. These contributors were invited to present oral representations. Second, where a particular point was made in broadly similar terms by several different contributors, the Commission selected the contributor(s) who had developed their points more thoroughly, in order that the points raised might be explored in greater detail during the course of the oral representations. Finally, the Commission also sought to arrive at a selection that would reflect a broad cross-section of society, including civil society groups and young Singaporeans. Of the 20 contributors invited, 19 accepted the Commission's invitation.[3]

1.5 The oral representations of these 19 contributors were made in public hearings, which were held over the course of four days on 18, 22 and 26 April 2016 and on 6 May 2016, at the Supreme Court auditorium. The list of contributors who made oral representations is also set out in **Annex A**. After these public hearings, 3 further meetings of the Commission were held, on 19 May, 13 July and 19 July 2016.

1.6 Aside from the formal meetings enumerated in the foregoing paragraphs, the members of the Commission also held many informal meetings, usually (but not always) in smaller groups. In the course of these informal meetings, particular points or ideas were examined and developed. These were then presented to the full Commission for consideration.

1.7 The Commission also received feedback from President Tony Tan and former President Mr S R Nathan on the matters referred to in the Terms of Reference.

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[3] The Workers' Party declined the Commission's invitation to make oral representations, stating that it intended to debate the matter in Parliament. This was in line with the position it had taken when it made its written submission to the Commission.

1.8 The Commission places on record its deep gratitude to all those who shared their views on these matters, whether by written submissions only or through their written submissions and oral representations. The Commission is also deeply grateful to President Tan and Mr Nathan for having generously and candidly shared their unique perspectives on these matters.

1.9 In this report, the Commission has set out some important historical and/or contextual material in Chapters 2 and 3. The core of the Commission's deliberations on the matters falling within the Terms of Reference is set out in Chapters 4, 5 and 6. The principal conclusions on these matters are summarised in Chapter 8. The summary should be read together with the principal discussions for an accurate understanding of the Commission's views. The Commission also received views and representations on matters that did not fall within the Terms of Reference. For completeness, the Commission has set out its thoughts on these matters in Chapter 7.

1.10 Finally, the Commission places on record its appreciation for the immense assistance it received from the Commission Secretary, Mr Christopher Tan and the Assistant Secretaries, Mr Ramasamy Nachiappan and Mr Shaun Pereira. The Commission is also grateful to Mr Scott Tan who assisted with the editing of this report.

CHAPTER 2

EVOLUTION OF THE PRESIDENT'S OFFICE IN POST-COLONIAL SINGAPORE

2.1 Before turning to the substantive discussion of matters falling within the Terms of Reference, the Commission considers it helpful to begin by tracing the origins of the office of President of Singapore. This will set the appropriate context for the ensuing discussion. Reference will also be made to parallel developments in the evolution of the office of the Head of State of Malaya, as that constitutes an integral part of the background against which the office of President was conceived.

Historical events leading to the establishment of the President's office at independence

2.2 In 1957, Singapore and Malaya were each on the cusp of achieving internal self-government. The Federation of Malaya Constitutional Commission (or the "Reid Commission", as it is more commonly known), chaired by Lord William Reid, was appointed by Her Majesty Queen Elizabeth II to make recommendations for a constitution for Malaya in contemplation of its imminent self-government. It produced a report in which it proposed, among other things, the establishment of a constitutional Head of State who would be "*a symbol of the unity*" [emphasis added] of the country.[4] This proposal was accepted and ultimately found expression in Article 32 of the Constitution of the Federation of Malaya, which provided that "[t]here shall be a Supreme Head of the Federation, to be called the Yang di-Pertuan Agong".[5]

2.3 On 1 August 1958, the State of Singapore Act was passed by the Parliament of the United Kingdom to provide for the establishment of Singapore as a self-governing

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4 *Report of the Federation of Malaya Constitutional Commission 1957* (11 February 1957) at ¶58.

5 Federation of Malaya Independence Order-in-Council (Statutory Instrument 1957 No 1533).

state.[6] An Order-in-Council made in 1958 established the office of the Yang di-Pertuan Negara.[7] Then Prime Minister Lee Kuan Yew emphasised the symbolic role of the Yang di-Pertuan Negara in a speech he made on the appointment of Encik Yusof bin Ishak as Singapore's first local Yang di-Pertuan Negara. He said:[8]

> This morning, a few minutes ago, our own Yang di-Pertuan Negara was sworn and installed in office. It is a milestone in our brief history. He is not a powerful man with power of life and death over us. His role is that of a constitutional Head of the State of Singapore. **He is the personification of the State, of which you and I are members**. …
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> … [T]he search for more perfect forms of government has moved from the rule of the autocrat to that of the collective leadership by the people. We, your elected Government, constitute that collective leadership. But again collective leadership is an abstract concept, and cannot easily invoke mass enthusiasm and loyalties. So over and above this collective leadership of the elected Government is the titular Head of State. **He symbolises all of us**. …
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> [emphasis added]

2.4 On 16 September 1963, Singapore achieved independence from the United Kingdom by merging with Malaya, North Borneo and Sarawak, to become a constituent state of the renamed Federation of Malaysia.[9] The Constitution of the Federation of Malaya was amended to reflect this new constitutional reality and the newly-renamed Constitution of the Federation of Malaysia took effect from 29 August 1963 ("**1963 Federation of Malaysia Constitution**").[10] The Yang di-Pertuan Agong of Malaya became the Head of State of the new Federation, while the Yang di-Pertuan Negara of Singapore remained the Head of State of the State of Singapore. As a state within the Federation, Singapore had its own state Constitution ("**1963 State of Singapore Constitution**"),[11] which was subject to the 1963 Federation of Malaysia

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6 State of Singapore Act (6 & 7 Eliz 2) (c 59).

7 Ord 4(1) of the Singapore (Constitution) Order-in-Council (Statutory Instrument 1958 No 1956).

8 Text of a speech by then Prime Minister Lee Kuan Yew, delivered at the City Hall on 3 December 1959 at p 2 <http://www.nas.gov.sg/archivesonline/data/pdfdoc/lky19591203a.pdf> (accessed 8 August 2016).

9 Section 4 of the Malaysia Act (No 26 of 1963) (M'sia).

10 Constitution (Amendment) Act (No 25 of 1963) (M'sia).

11 Set out in Schedule 3 to the Sabah, Sarawak and Singapore (State Constitutions) Order-in-

Constitution. Article 1(1) of the 1963 State of Singapore Constitution provided that there shall be a Yang di-Pertuan Negara of the State of Singapore, who shall be appointed by the Yang di-Pertuan Agong.

2.5 On 9 August 1965, Singapore separated from the Federation of Malaysia and became an independent state. Singapore retained the 1963 State of Singapore Constitution but this was supplemented by the adoption of specific articles from the 1963 Federation of Malaysia Constitution, as provided in the Republic of Singapore Independence Act 1965.[12] That Act also provided that the Yang di-Pertuan Agong of Malaysia shall cease to be the "Supreme Head of Singapore" and that his "sovereignty and jurisdiction and power and authority, executive or otherwise, in respect of Singapore shall be relinquished and shall vest in [the] Head of State [of Singapore]".[13] The title of Singapore's Head of State was changed by the Constitution (Amendment) Act 1965, from "Yang di-Pertuan Negara" to the "President of Singapore".[14] The President was to be elected by Parliament and would hold office for a term of four years.[15] Encik Yusof bin Ishak (who had previously been appointed as Singapore's Yang di-Pertuan Negara on 3 December 1959) was appointed the first President of the Republic of Singapore on 9 August 1965.

2.6 When the President of Singapore replaced the Yang di-Pertuan Agong as the constitutional Head of State of independent Singapore, the functions and roles attached to the office, including that of being "a symbol of the unity of the country" (as contemplated by the Reid Commission when drafting the Malayan Constitution) would have been assumed by the office of President since there is nothing to suggest otherwise. Indeed, as noted above, the Republic of Singapore Independence Act 1965 expressly provided that all the incidents of the office of the Yang di-Pertuan Agong passed to Singapore's Head of State. The symbolic role of the Yang di-Pertuan Agong as well as that of the Yang di-Pertuan Negara thus persisted and vested in the President

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Council (Statutory Instruments 1963 No 1493).

12 Republic of Singapore Independence Act (Act 9 of 1965).

13 Section 3 of the Republic of Singapore Independence Act (Act 9 of 1965).

14 Section 2 of the Constitution (Amendment) Act 1965 (Act 8 of 1965).

15 Section 3 of the Constitution (Amendment) Act 1965 (Act 8 of 1965).

of Singapore. In keeping with this, the following observation was made by a Member of Parliament who spoke in support of a motion to elect President Yusof bin Ishak for a second 4-year term as President of the Republic of Singapore:[16]

> It is often said that a President and Head of State is merely a symbolical figure expected to do no more than perform dreary ceremonial chores. This may be so in terms of constitutional abstractions, but in the eyes of the ordinary people who do not understand political abstractions, **the Head of State is something more than a legal abstraction. He is the State personified**. The State cannot open a sports meet or a charity bazaar. But when the President or his wife does these things, the abstract concept of State is grasped in terms that people can understand. The President and his lady make the State comprehensible. [emphasis added]

The historical origins of the office of President thus underscore the significance of the President's role as a symbol of the unity of the country and the personification of the state.

2.7 This is reinforced by a study of the functions and roles of the Monarch of the United Kingdom. Professor Thio Li-ann has observed that the Heads of State in many former British colonies were intended to discharge functions similar to that of the Monarch under the Westminster model of government, which they inherited from the United Kingdom.[17] In this respect, Professor Thio notes that the Monarch "has an important role to play in symbolising national identity and unity, and thereby promoting social cohesion, particularly by being a rallying force in times of crisis or tragedy".[18]

2.8 Hence, at the time the office of President was created, it is clear that, of his various functions, his role as a symbol of unity and the personification of the state stood out as being the central and defining one.

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16 *Singapore Parliamentary Debates, Official Report* (30 November 1967) vol 26 at col 416 (S Ramaswamy, Parliamentary Secretary to the Minister for Finance).

17 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) ("*A Treatise on Singapore Constitutional Law*") at ¶9.006.

18 *A Treatise on Singapore Constitutional Law* at ¶9.010.

Historical powers of the President

2.9 Consistent with the symbolic nature of the office, the President's powers were largely non-discretionary and could only be exercised on the advice of the Cabinet (or a Minister acting under the general authority of the Cabinet).[19] These non-discretionary powers can be found in the Constitution[20] as we well as in other legislation.[21]

2.10 The President had some discretionary constitutional powers, but these were limited. These included powers to:

a) appoint a Member of Parliament who, in the President's judgment, was likely to command the confidence of the majority of the Members of Parliament as Prime Minister;[22]

b) deny a request to dissolve Parliament;[23]

c) remove the Prime Minister, if the President was satisfied that the incumbent had ceased to command the confidence of a majority of the Members of Parliament;[24] and

d) dissolve Parliament if the Prime Minister's office was vacant and he was

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19 Article 21(1) of Constitution of the Republic of Singapore (1980 Reprint) ("Constitution (1980 Reprint)").

20 Examples of the President's non-discretionary constitutional powers under the Constitution (1980 Reprint) include the power to: assent to Bills (see Article 58(1)); appoint Ministers (see Article 25(1)), Parliamentary Secretaries (see Article 31(1)) and Permanent Secretaries of Ministries (see Article 34(2)(*a*)); and issue a Proclamation of Emergency (see Article 150).

21 Examples of the President's non-discretionary powers under other legislation include the power to: cancel or confirm a restraining order under section 12 of the Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed) when the Cabinet and the Presidential Council for Religious Harmony are in agreement on the course of action to take; appoint members of the Majlis Ugama Islam, Singapura under section 7 of the Administration of Muslim Affairs Act (Cap 3, 2009 Rev Ed); and appoint the President and Deputy President of the Industrial Arbitration Courts under section 3(1) of the Industrial Relations Act (Cap 136, 2004 Rev Ed).

22 Article 21(2)(*a*) read with Article 25 of the Constitution (1980 Reprint).

23 Article 21(2)(*b*) of the Constitution (1980 Reprint).

24 Article 26(1)(*b*) of the Constitution (1980 Reprint).

> satisfied that a reasonable time had passed since the office had been vacated and that there was no Member of Parliament likely to command the confidence of a majority of the Members of Parliament.[25]

2.11 The President also performed various ceremonial duties as well as other "soft" functions, including some associated with Singapore's international diplomacy.[26] These soft functions also included extending the benefit of his experience, perspective and wisdom to the Government of the day. Here, too, the President's role resembles that of the Monarch of the United Kingdom. Walter Bagehot, a 19th century British constitutional commentator, observed that the Monarch, as Head of State, had three rights: "the right to be consulted, the right to encourage, the right to warn". He noted that the Sovereign "might not always turn [the Minister's] course, but he would always trouble his mind". [27]

Genesis of the Elected Presidency

2.12 In 1984, in his National Day Rally, then Prime Minister Lee Kuan Yew first mooted the idea of transforming the Presidency from an appointed to an *elected* office. [28] He said that an elected President would be well-placed to safeguard Singapore's reserves,[29] which had been carefully accumulated in the 19 years since independence.[30] In the words of Mr Lee:[31]

> … as the constitution now stands, if there is a freak election result … all the reserves are available. The larder is wide open, you can raid it. Twenty-five years' work, savings, you can go on a spending spree for five years and then

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25 Article 65(2) of the Constitution (1980 Reprint).

26 Professor Thio Li-ann writes that "[b]y performing ceremonial and diplomatic duties such as conferring honours or receiving ambassadors, the President in a Westminster system is above politics and non-partisan": see Thio Li-Ann, *Singapore Chronicles: Presidency* (Straits Times Press, 2015) at p 11.

27 Walter Bagehot, *The English Constitution* (Little, Brown, and Company, 1873) at pp 139–140.

28 Foo Choy Peng, "Plan to safeguard reserves", *The Business Times* (20 August 1984) at p 1.

29 There was more than $20bn in Singapore's reserves then.

30 See "Protecting our future", *The Singapore Monitor – Morning Edition* (22 August 1984).

31 Transcribed from the video uploaded to the website of the National Archives of Singapore, from 62:19 to 64:02 at <http://www.nas.gov.sg/archivesonline/audiovisual_records/record-details/486d47a6-1164-11e3-83d5-0050568939ad> (accessed 8 August 2016).

> we are another broken-back country. **So we have thought out some blocking mechanisms so that no government can spend previously built-up reserves. You build up the reserve, you spend it.** You promise free buses, right? Raise the taxes. But you are not spending what we have saved of peoples', of Singaporeans', wealth. **And I think we should have a President with a moral authority to block it.** The thing has to be thought out very carefully because … there's bound to be a row when a President says "no" to a newly-elected Prime Minister. Flushed with victory, he wants to fulfil his election promises. You see them, you read of them all the time when they change governments. … How do we do this? **I think the President has to be elected**. By the people direct … , not in Parliament, so he also has moral authority. [emphasis added]

The First White Paper

2.13 In 1988, four years after Mr Lee Kuan Yew's speech, the contours of the proposed redefinition of the office of President took shape. The first of two White Papers on the Elected Presidency ("**First White Paper**") was tabled in Parliament on 29 July 1988 by then Deputy Prime Minister Goh Chok Tong.[32]

2.14 The First White Paper articulated two reasons for the transformation of the President's office into an elected one. First, there was a need to guard against the damage to Singapore's long-term economic prospects that could come about by a free-spending Government intent on buying over the electorate with imprudent promises to grant subsidies and dispense largesse that would have to be funded by draw-downs from the country's reserves, or through the raising of large international loans to finance consumption rather than investment.[33] Second, there was a need to put in place constitutional safeguards to maintain meritocracy and impartiality in the Public Service and to prevent nepotism or the making of politically-motivated appointments to key offices.[34]

2.15 The First White Paper noted that the Constitution had originally been drafted not for an independent nation, but for a constituent state within the larger Federation of Malaysia. After separation from the Federation in 1965, the 1963 State of Singapore

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[32] *Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services* (Cmd 10 of 1988, 29 July 1988) ("First White Paper").
[33] First White Paper at ¶5.
[34] First White Paper at ¶11.

Constitution needed to be supplemented by the 1963 Federation of Malaysia Constitution, parts of which continued to operate in Singapore. Because of this, the Constitution did not incorporate checks and balances commonly found in the constitutional documents of many other nations, such as the presence of upper legislative bodies with powers of veto or delay.[35] The Constitution, as it then stood, gave the Prime Minister and the Cabinet "untrammelled power" in the sense that they had "complete legal access to all the levers of power and decision-making".[36]

2.16 The First White Paper considered various systems of checks that could be instituted. These included bicameralism (the creation of an upper legislative body), a system of guardianship (reposing the power of veto in the Presidential Council for Minority Rights ("**PCMR**") or some other body analogous to the United States Federal Reserve Board), or direct democracy (requiring decisions on financial assets to be subject to a national referendum). However, each of these was thought to be unsuitable because:[37]

(a) it was desirable that the Prime Minister and the Cabinet retain full freedom and initiative to govern the nation in the context of the tried-and-tested Westminster Parliamentary system;

(b) resorting to national referendums to keep the Government in check would be unwieldy and could impede the Government's responsiveness; and

(c) the person or body entrusted with the task of checking the elected Government needed to have legitimacy and the moral authority to block the Government.

2.17 The First White Paper thus proposed an elected Presidency as the institution that should be empowered to veto certain categories of Government action, and thus act

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35 First White Paper at ¶¶13–14.
36 First White Paper at ¶12.
37 First White Paper at ¶18.

as a check on the Government.[38] The First White Paper explained that this would result in the creation of a "two-key safeguard mechanism":[39]

> To safeguard national reserves and assets, and the integrity of the public services, it is proposed to create an elected President who will serve as watchdog or custodian in these two areas. …
>
> The power of the President to grant or withhold his concurrence in these two areas amounts to a two-key safeguard mechanism. The Prime Minister and Cabinet will possess one key and ***will take the initiative***. For their decision to be valid, the second key must be used; namely, ***the President must concur***.
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> [emphasis added]

2.18 The First White Paper further proposed the creation of a special committee to advise the President, known as the Presidential Committee for the Protection of Reserves ("**Reserves Committee**"). The Reserves Committee would give expert advice and make recommendations to the President, as well as "moderate" the President's custodial powers, preventing him from making "hasty or arbitrary decisions".[40] The First White Paper indicated that the President *must* consult the Reserves Committee "before he exercise[d] his reserve powers with regard to finances and assets".[41] However, the President would not be bound to accept the Reserves Committee's recommendations.[42] The First White Paper recommended that the Reserves Committee should comprise 3 to 5 members, with the Chairman appointed by the President, one

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38 The expression "Government" is technically a compendious term which refers collectively to the Judiciary, the Legislature, and the Executive which collectively make up the state. However, in the First White Paper, and more generally in everyday parlance, the expression "Government" is used to refer to the Cabinet and Parliament, as these are the institutions of the state which have a role in policy-making and day-to-day governance. This is also how the Commission shall use the expression "Government" in this report.

The Commission also notes that under the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("Constitution"), the expression "Government" is used to refer only to the executive branch. This is because Part V of the Constitution is entitled "The Government"; and chapter 1 of Part V deals with the President while Chapter 2 of Part V deals with the Cabinet. Where necessary, the Commission will specifically refer to the "Cabinet" as distinct from "the Presidency" to distinguish these two constituent parts of the executive branch.

39 First White Paper at ¶¶33–34.

40 First White Paper at ¶¶23–24.

41 First White Paper at ¶46.

42 First White Paper at ¶24.

member appointed by the Government and one member appointed by the Chairman of the Public Service Commission ("**Chairman, PSC**"). Any additional appointments (in the event that the Reserves Committee was to have more than 3 members) were to be made by the President.[43] In terms of eligibility for the Reserves Committee, the First White Paper proposed that its members be subject to the same eligibility requirements as those applicable to membership of the PCMR. The First White Paper also suggested that in making appointments to the Reserves Committee, the President should have regard to the potential appointee's "expertise and experience in banking, financial and other monetary matters".[44]

2.19 The First White Paper contemplated the possibility of deadlock arising between the President and the Government in the event of a Presidential veto, but did not propose any specific mechanism for resolving such an impasse. Instead, the First White Paper noted that the Presidential veto could be overcome with the following measures:[45]

a) if the Government possessed a two-thirds Parliamentary majority, it could amend the Constitution to modify the President's veto power;

b) if not, the Government could resign and seek to be re-elected with a two-thirds majority, thereby effectively forcing a referendum on the issue; or

c) the Government could persuade the electorate to vote the President out at the next Presidential election.

2.20 The First White Paper proposed that the person seeking to be elected as President should have had "Ministerial or High Executive or Administrative experience".[46] In particular, it was suggested that candidates for the office ought to have exercised authority previously (preferably in the public sector) and therefore "experienced the contrary pulls and pressures of government decision making".[46] The

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43 First White Paper at ¶46.
44 First White Paper at ¶46(c).
45 First White Paper at ¶¶27–32.
46 First White Paper at ¶18(d).

First White Paper also identified certain categories of persons who would qualify to run for President.[47] For the public sector, the First White Paper suggested the following officeholders: Ministers, the Speaker of Parliament, the Chief Justice, Judges of the Supreme Court, the Attorney-General, the Auditor-General, the Accountant-General, Permanent Secretaries, and Chairmen or Chief Executives of statutory boards. For the private sector, the First White Paper suggested that Chief Executive Officers of *publicly-listed* corporations would be suitable. The First White Paper further proposed that the persons in question must have held their qualifying appointments for at least 3 years in order to be eligible to stand for election.[47]

2.21 The First White Paper also proposed that the task of assessing whether a candidate possessed the necessary experience and qualities be entrusted to an impartial body comprising 3 or 5 persons.[47]

2.22 The First White Paper contained some other ancillary proposals, which are briefly stated below:

a) The creation of the office of a Vice-President. The Vice-President's office would be occupied by the running mate of the successful candidate in the Presidential elections, and the Vice-President would "assist the President in the exercise of such functions delegated to him by the President". He could also concurrently hold office as a Minister or Member of Parliament.[48]

b) To give the President discretionary powers to withhold assent to legislation that circumvented or curtailed his custodial role in relation to financial assets and appointments to the Public Service and statutory boards.[49]

c) To lengthen the President's term to 6 years (instead of 4, under the then

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47 First White Paper at ¶18(e).
48 First White Paper at ¶¶38–40.
49 First White Paper at ¶47.

existing system).[50]

2.23 The First White Paper was debated in Parliament on 11 and 12 August 1988 and it was, by and large, positively received.[51] At the end of that debate, Parliament resolved to support the principles set out in the First White Paper as the basis for the preparation of a Constitutional Amendment Bill to introduce the Elected Presidency.

The Second White Paper and the Constitutional Amendment Bill introducing the Elected Presidency

2.24 Two years later, the contours of the proposed Elected Presidency were further defined. On 27 August 1990, the Second White Paper on the Elected Presidency ("**Second White Paper**") was presented to Parliament.[52] Three days after that, on 30 August 1990, the Constitution of the Republic of Singapore (Amendment No 3) Bill ("**1990 EP Bill**"), which set out the proposed constitutional amendments to put the Elected Presidency in place, was read in Parliament for the first time.[53]

2.25 The Second White Paper built on the proposals in the First White Paper and developed the two-key safeguard mechanism in greater detail. Specifically, the Second White Paper proposed giving the Elected President the right to veto:

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50 First White Paper at ¶35.

51 *Singapore Parliamentary Debates, Official Report* (11 & 12 August 1988) vol 51. Some Members of Parliament, however, voiced reservations. One pointed out that there was no guarantee that an electorate which voted in a bad government would not also vote in an irresponsible President. He therefore proposed creating a Council for the Protection of Reserves in lieu of an elected President: at col 541 (S Chandra Das, Member of Parliament for Chong Boon). Another argued that the President should "continue to be above politics" as he was "the symbol of national unity" and had to be the "stabilizing force" in a time of national crisis: at col 552 (Dr Lau Teik Soon, Member of Parliament for Serangoon Gardens). Yet another expressed the view that the Elected President's proposed powers over appointments were too broad: at col 567 (Dr Wang Yai Kuen, Member of Parliament for Bukit Timah). One also suggested that the pre-qualification criteria were too stringent: at cols 591 and 595 (Chiam See Tong, Member of Parliament for Potong Pasir).

52 *Safeguarding Financial Assets and the Integrity of the Public Services: The Constitution of the Republic of Singapore* (Cmd 11 of 1990, 27 August 1990) ("Second White Paper").

53 Constitution of the Republic of Singapore (Amendment No 3) Bill 1990 (Bill 23 of 1990).

a) the annual budgets of the Government, key statutory boards[54] and Government companies,[55] if they sought to draw from past reserves;[56] and

b) key public service appointments (including persons at the helm of those statutory boards and Government companies contemplated in (a) above).[57]

These key statutory boards and Government companies were proposed to be brought under the President's oversight as they held a substantial part of the Government's assets.[58] It was thought that while the President could not reasonably be expected to oversee their activities in detail, he would nonetheless effectively be in a position to exercise control over them by having the power to approve their budgets and holding a veto over key appointments to apex positions within these entities.[59]

2.26 The Second White Paper further proposed various other fiscal safeguards. These included, for example, requiring the President's concurrence for loans raised, debts incurred or guarantees given by the Government,[60] as well as giving the President the power to veto any bill which varied the powers of the Central Provident Fund ("**CPF**") Board to invest CPF monies.[61]

2.27 The Second White Paper also proposed expanding the scope of matters subject

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54 The statutory boards contemplated by the Second White Paper were: (a) the Board of Commissioners of Currency, Singapore; (b) the Central Provident Fund Board; (c) the Housing and Development Board; (d) the Jurong Town Corporation; (e) the Monetary Authority of Singapore; (f) the Port of Singapore Authority; (g) the Post Office Savings Bank; (h) the Public Utilities Board; and (i) the Telecommunication Authority of Singapore. See the Second White Paper at ¶16.

55 The government companies contemplated by the Second White Paper were: (a) Government of Singapore Investment Corporation Pte Ltd ("GIC"); (b) MND Holdings Pte Ltd; (c) Singapore Technologies Holdings Pte Ltd; and (d) Temasek Holdings Pte Ltd. See the Second White Paper at ¶17.

56 Second White Paper at ¶8(a).

57 Second White Paper at ¶21.

58 Second White Paper at ¶15.

59 Second White Paper at ¶19.

60 Second White Paper at ¶42.

61 Second White Paper at ¶43.

to the Elected President's oversight beyond what had been contemplated by the First White Paper, by allowing him to exercise protective functions in certain other areas. Specifically, the Second White Paper proposed that the President's concurrence be required for the continued detention of any person under the Internal Security Act ("**ISA**"),[62] where the Advisory Board[63] had recommended that person's release,[64] as well as for the continuance of a restraining order issued by the Minister under the proposed Maintenance of Religious Harmony Act ("**MRHA**").[65] In a similar vein, the Second White Paper also proposed that investigations by the Corrupt Practices Investigation Bureau ("**CPIB**") into complaints of corruption against Ministers should be permitted to be initiated or continued with the concurrence of the President, even if the Prime Minister had not consented to such investigations.[66]

2.28 The Second White Paper proposed the establishment of a Council of Presidential Advisers ("**CPA**") in place of the Reserves Committee contemplated by the First White Paper.[67] It is worth noting that the proposal for the creation of the CPA was placed in a section entitled "Checks on the President". Hence, while the Reserves Committee was contemplated by the First White Paper to perform a purely *advisory* function, it appears the CPA was thereafter conceived of as also performing the additional function of being a *check* on the exercise of the President's powers. (The role of the CPA and the weight accorded to its advice has been refined since then, and this will be elaborated on in Chapter 6 below.)

2.29 In defining the role of the CPA, the Second White Paper proposed that the President:[68]

a) be *obliged* to consult the CPA when exercising his discretion to approve

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62 Internal Security Act (Cap 143, 1985 Rev Ed) ("ISA").
63 Constituted under Article 151 of the Constitution and chaired by a Supreme Court Judge.
64 Second White Paper at ¶25.
65 The Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed) ("MRHA") had been proposed at that juncture but had not yet been passed into law.
66 Second White Paper at ¶28. It was thought that an irresponsible and free-spending Government would likely condone corruption or block the CPIB's investigations.
67 Second White Paper at ¶¶29–30(a).
68 Second White Paper at ¶30(c).

or veto budgets of the Government, key statutory boards and key Government companies;

b) be *empowered* to consult the CPA on key public service appointments; and

c) be *empowered* to consult the CPA when exercising his protective functions pertaining to detentions under the ISA, restraining orders under the (proposed) MRHA and the continuance of certain CPIB investigations.

2.30 It was proposed that the CPA comprise 6 members. Of these, 2 would be appointed by the President (1 of whom would be the Chairman of the CPA), 2 by the Prime Minister and 2 by the Chairman, PSC.[69]

2.31 The Second White Paper also proposed allowing Parliament to override the President's veto of Supply Bills and Supplementary Supply Bills. This was a departure from the First White Paper which, as mentioned above, had proposed that the Government could overcome a Presidential veto only by the measures listed at paragraph 2.19 above. In proposing the override, the Second White Paper sought to strike a suitable balance between two conflicting goals: on the one hand, enabling the Government to avoid unnecessary logjams caused by "manifestly unreasonable or unjustified" exercises of the Presidential veto power; and, on the other hand, the preservation of the "value of the Elected President as a safeguard" by keeping the override mechanism out of the easy reach of Parliament.[70] The Second White Paper thus proposed that the Parliamentary override could only be effected by way of a two-thirds majority vote in Parliament. Additionally, it stated that the override should only be available when the President vetoed any proposed Government action *contrary* to the advice of a majority of the members of the CPA.[71]

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69 Second White Paper at ¶30(b).
70 Second White Paper at ¶32.
71 Second White Paper at ¶35.

2.32 The Second White Paper contemplated that the Parliamentary override should *not* extend to a veto exercised by the President in respect of the following matters:

a) budgets of key statutory boards or Government companies; and

b) key public service appointments.

These matters were said to be the responsibility of the Executive, and, therefore, any conflicts between the Cabinet and the President should be resolved without Parliamentary intervention. In the event the President disapproved of the budget of a Government company or a statutory board or refused the appointment of a candidate to a key appointment, then another budget would have to be submitted or another candidate put forward, as the case might be, to the President's satisfaction.[72]

2.33 The Second White Paper also set out pre-qualification criteria for those wishing to offer themselves as candidates for the office. These criteria were largely similar to those in place today. In particular, it proposed that applicants satisfy a Presidential Elections Committee ("**PEC**") that they had the necessary experience and qualifications to enable them to discharge the functions of the office of President in order to qualify to be a candidate.[73]

2.34 The Second White Paper jettisoned the idea of creating the office of a Vice-President in addition to that of the President due to the conflict of interest that would arise if the Vice-President, as contemplated by the First White Paper, also served as a Cabinet Minister. It was acknowledged that it was not satisfactory for an individual to hold both offices, because in his capacity as Vice-President, he might have to act on the President's behalf to scrutinise and, if necessary, block decisions of the Cabinet.[74] Furthermore, as was later observed when the Elected Presidency was legislated, there may not have been sufficient responsibilities to keep a Vice-President meaningfully occupied (see paragraph 5.22 below).

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72 Second White Paper at ¶34.
73 Second White Paper at ¶¶37–39.
74 Second White Paper at ¶¶50–51.

2.35 The Second White Paper also proposed various measures to entrench the President's custodial powers. For example, it proposed giving the President the discretion to reject the Cabinet's advice to issue a Proclamation of Emergency.[75] It was thought that this would prevent the Government from seeking to circumvent the constitutional safeguards reposed in the office of President by proclaiming a state of emergency, during which time it would have free rein to exercise sweeping executive and legislative powers.[76] The Second White Paper further proposed giving the President the power to put to a national referendum any proposed constitutional amendments that would affect his custodial powers. The amendment would then take effect only if it was supported by two-thirds of the electorate.[77]

The 1990 Select Committee Report

2.36 The 1990 EP Bill was then submitted to a Select Committee of Parliament ("**Select Committee**"). The Select Committee produced a report after taking into account written and oral submissions from members of the public ("**1990 Select Committee Report**").[78] The 1990 Select Committee Report, which was presented to Parliament on 18 December 1990, contained wide-ranging recommendations that were mostly accepted in the final version of the 1990 EP Bill. Some of the salient recommendations in the 1990 Select Committee Report are summarised in the following paragraphs.

2.37 The 1990 Select Committee Report stated:[79]

> Of all the ***safeguard*** roles envisaged for the President, the most important is clearly that of protecting the reserves. [emphasis added]

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75 Second White Paper at ¶¶44–45. Under the version of the Constitution currently in force, a Proclamation of Emergency is issued by the President acting on the advice of the Cabinet (see Article 150).

76 Second White Paper at ¶¶44–45.

77 Second White Paper at ¶47.

78 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) ("1990 Select Committee Report").

79 1990 Select Committee Report at ¶14(b).

It is therefore unsurprising that the 1990 Select Committee Report devoted significant attention to operational questions concerning how the Elected President would exercise oversight in respect of fiscal matters.[80]

2.38 The Select Committee proposed that the President should *have to* consult the CPA when exercising his discretion on key public service appointments. This marked a shift from the proposal in the Second White Paper, which was that consultation with the CPA would be mandatory only when the President was considering whether to approve or veto the *budgets* of the Government, key statutory boards and Government companies. However, the Select Committee added that the final decision on whether to approve key public service appointments should ultimately remain with the President.[81]

2.39 The Select Committee also opted *not* to mandate consultation with the CPA when it came to the President's exercise of his protective functions pertaining to ISA detentions, MRHA restraining orders and CPIB investigations. Specifically, the Select Committee was of the view that in relation to the former two matters, there was no need to mandate such consultation because the President would already have the benefit of the views of the Advisory Board (in relation to ISA detentions) or the Presidential Council for Religious Harmony (in relation to MRHA restraining orders), each of which was an advisory panel constituted under the relevant legislation. As for CPIB investigations, the Select Committee considered that they were highly sensitive and, further, it opined that since "they are still only investigations, not criminal charges or convictions which may not necessarily follow", there was no need to mandate consultation with the CPA.[82]

2.40 As to the CPA's composition, the Select Committee observed that having 6 members in the CPA could create problems if the members were split equally on an issue. It thus proposed that the CPA be composed of 5 members (2 to be nominated by the President, 2 by the Prime Minister and 1 by the Chairman, PSC).[83] It also proposed

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80 1990 Select Committee Report at ¶¶45–74.
81 1990 Select Committee Report at ¶36.
82 1990 Select Committee Report at ¶37.
83 1990 Select Committee Report at ¶30.

that the members of the CPA be appointed for fixed 6-year terms, with the appointments staggered to ensure continuity. The Chairman of the CPA was to be appointed by the President, but he would have to vacate his chairmanship if a new President was elected.[84]

2.41 The Select Committee disagreed with the suggestion of some representors that the proposed prerequisites for persons to qualify to contest in Presidential elections were too stringent. It stressed that the object was not to ensure that every citizen had the opportunity to stand for election as President, but rather to ensure that voters would be given "qualified and suitable candidates" to choose from. Given that so much was at stake, the goal was to ensure that the best person was selected or, at least, to minimise the prospects of a plainly unsuitable person being elected. It was not enough that candidates meet the minimal requirements applicable to election to the office of Member of Parliament; instead, candidates would have to "fulfil exacting standards of competence, experience and rectitude, which should be spelt out in the Constitution."[85]

2.42 The Select Committee dealt specifically with the concern that the proposed criteria to qualify to contest in Presidential elections were more stringent than those for becoming Prime Minister. It noted that the Prime Minister was not chosen directly by the electorate, but by fellow Members of Parliament, who would know the candidate well, "if not intimately". By contrast, the President was voted in by the public whose knowledge of Presidential candidates would only be informed by what they heard of him in media reports or from others. The Prime Minister would thus have to meet high standards set by his own political party and command the confidence of the Members of Parliament. By contrast, these stringent tests of leadership were not present in a Presidential election, where the President was elected directly by the people. The Select Committee was therefore of the view that the "pre-qualification approach" was justified and that only those with "certain demonstrated *attributes, experience and expertise*" [emphasis in original text] should be permitted to run for Presidential office.[86]

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84 1990 Select Committee Report at ¶¶31–33.
85 1990 Select Committee Report at ¶¶6–11.
86 1990 Select Committee Report at ¶¶12–13.

2.43 The Select Committee also amended the proposed list of public-sector offices which would automatically qualify the officeholder (provided he held the office for the requisite tenure) to contest in Presidential elections.[87]

2.44 The Select Committee accepted suggestions that basic provisions concerning the composition of the PEC be set out in the Constitution, given the key function that the PEC would perform in pre-qualifying candidates for Presidential elections. The Select Committee recommended that the PEC comprise the Chairman, PSC, a member of the PCMR and the Chairman of the Public Accountants Board.[88]

2.45 The Select Committee noted that the President not only had to be above party politics, but also had to "*manifestly be seen to be so*" [emphasis in original]. It thus proposed that candidates who were members of political parties would have to resign their membership before contesting in Presidential elections, to avoid any doubts as to whether the candidate was still subject to party discipline.[89] However, the Select Committee stated that political parties should be permitted to campaign for or against individual candidates.[90]

2.46 The Select Committee agreed with the recommendation in the Second White Paper against having a Vice-President, stating that the arrangements that had already been proposed for other persons to exercise the functions of President (as and when needed) were practical and sufficiently flexible.[91]

2.47 However, the Select Committee rejected the proposal mooted in the Second White Paper to vest the President with the discretion to reject the Cabinet's advice to issue a Proclamation of Emergency. It expressed the view that the Government of the

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87 For example, the Select Committee removed Judges and Judicial Commissioners from the proposed list of qualifying offices that had originally been included in the 1990 EP Bill: see 1990 Select Committee Report at ¶14(c). It also rejected proposals that the categories of persons deemed qualified for candidacy should be extended to include Ambassadors, Professors and the Solicitor-General: see 1990 Select Committee Report at ¶14(h).

88 1990 Select Committee Report at ¶¶16–17.

89 1990 Select Committee Report at ¶14(f).

90 1990 Select Committee Report at ¶14(f).

91 1990 Select Committee Report at ¶41.

day should be able to deal swiftly and expeditiously with any emergency and "[t]he process of satisfying the President of the need for a Proclamation and obtaining his concurrence may unnecessarily delay the Government's response to an emergency".[92]

2.48 The Select Committee also recommended that the proposed constitutional provision entrenching the powers of the Elected Presidency only be brought into operation after a period of time had passed. It noted that the changes brought about by the introduction of the Elected Presidency were novel and wide-ranging and might give rise to unforeseen problems. Thus, there was a need to allow time for adjustments or refinements to be made with the benefit of experience, before the powers of the Elected President were entrenched.[93]

Introduction of the Elected Presidency in 1991 and the changes thereafter

2.49 The Elected Presidency was subsequently introduced in 1991, largely in the form proposed in the 1990 Select Committee Report, with the passage of the Constitution of the Republic of Singapore (Amendment) Act 1991.[94]

2.50 However, the President's discretionary powers were thereafter refined and, in some respects, narrowed through subsequent constitutional amendments. One example of this was the change to the Parliamentary override mechanism. When the Elected Presidency was first introduced, Parliament was only empowered to override the President's veto where it pertained to Supply Bills and Supplementary Supply Bills.[95] In 1996, the availability of a Parliamentary override was extended to include the President's veto of key appointments to the Public Service, statutory boards and Government companies.[96] Other examples included the changes to the scope of the

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92 1990 Select Committee Report at ¶24.
93 1990 Select Committee Report at ¶¶72–73.
94 Constitution of the Republic of Singapore (Amendment) Act 1991 (Act 5 of 1991).
95 *Singapore Parliamentary Debates, Official Report* (28 October 1996) vol 66 at col 764 (Goh Chok Tong, Prime Minister).
96 Sections 5–7 of the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996).

Elected President's oversight over particular types of Government spending.[97] It has been suggested that approximately one third of all the constitutional amendment Acts passed between 1991 and 2007 concerned the Elected Presidency, and that half of those amendments were directed at the President's fiscal powers.[98]

2.51 Some changes have also been made to the CPA framework since the introduction of the Elected Presidency in 1991. Three of these bear mention. First, in 1996, the size of the CPA was increased from 5 persons to 6, with the Chief Justice appointing the sixth member.[99] This was done to widen the CPA's expertise to reflect the broadened scope of matters on which the President was required to consult the CPA.[100] Second, in 2001, the re-appointment term of CPA members was shortened from 6 years to 4 years.[101] Third, in 2007, the Constitution was amended to provide for 2 "alternate members" in the CPA, who would act in place of any other members who might temporarily be unable to take part in proceedings of the CPA.[102]

Principles that have informed the evolution of the Elected Presidency

2.52 In the Commission's view, it is possible to discern from the foregoing narrative a number of guiding principles that have informed the evolution of the Elected Presidency. The Commission has, in developing its recommendations on the issues it has been asked to consider, taken these principles into account. These principles are set

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97 For example, Government spending on defence and security was removed from the purview of the President's supervision in 1994. Similarly, amendments in 1994, 2002 and 2004 removed intra-group transfers between the Government, statutory boards and Government companies in certain circumstances from the President's fiscal oversight.

98 Yvonne CL Lee, "Under Lock and Key: The Evolving Role of the Elected President as a Fiscal Guardian" (2007) SJLS 290 at p 291.

99 Section 10 of the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996).

100 *Singapore Parliamentary Debates, Official Report* (28 October 1996) vol 66 at col 767 (Goh Chok Tong, Prime Minister).

101 Section 2 of the Constitution of the Republic of Singapore (Amendment) Act 2001 (Act 2 of 2001).

102 Section 5 of the Constitution of the Republic of Singapore (Amendment) Act 2007 (Act 31 of 2007). Of the 2 alternate members, 1 would be appointed by the President in his discretion, while the other would be nominated by the Prime Minister, after consulting with the Chief Justice and Chairman, PSC.

out in brief in this section and will be elaborated upon in subsequent sections, as and when appropriate.

2.53 First, the historical role of the President as a unifying symbol of the nation has not in any way been abrogated by the custodial powers which were conferred upon the office in 1991. Rather, the custodial role appears to have been *overlaid* upon the historical role. In the Commission's view, this is an important point which might tend to be overlooked because a great deal of attention has been directed at the President's custodial powers. The attention given to the custodial powers is unsurprising, since this was a new feature that had been introduced when the Presidency was transformed into an elected office, and it was one with the potential to affect interactions between the Government and the President. However, the principal role of the President continues to be that of Head of State: the President is the very personification of the country and its chief public representative. This has not been displaced and it bears emphasising.

2.54 Second, the Elected President's custodial role was envisaged to be a check on the powers of the Government of the day in relation to two key assets that are of strategic importance to Singapore:

a) The first is the financial reserves which have been assiduously accumulated over the decades and which could prove critical in the nation's time of need but which could also be squandered by an irresponsible Government for politically expedient reasons within a very short time.

b) The second is Singapore's value proposition of an efficient infrastructure anchored in a Public Service that is branded as incorruptible.

Since Singapore has no other assets, natural resources or hinterland which it can fall back on, it is not an overstatement to say that both these assets hold significance of existential proportions. As a matter of policy, a two-key safeguard mechanism designed to protect both the nation's reserves and the integrity of the Public Service was thus an unquestionably wise initiative. This is especially the case because it should not be

assumed that those in the Government will always be honest and incorruptible.

2.55 Third, if the second key is to be vested in the President, the office should be an elected one. This would confer on the President an electoral mandate and, with it, the democratic legitimacy and moral authority needed to block the elected Government, if and when the need should arise.

2.56 Fourth, there should be a pre-qualification process to ensure that only persons who possess the requisite experience and expertise to be President are able to contest in Presidential elections. This is necessitated by the fact that the President is conferred critical custodial functions. It is neither possible nor desirable for the Constitution to set out exhaustively the types of experience and expertise that would make a person suited to discharge the office of President. The eligibility criteria prescribed in the Constitution are thus intended as a proxy to help identify candidates who are likely to have the *actual* experience and expertise to effectively discharge these functions and duties of the Presidency.

2.57 Fifth, the Elected President should in general be advised by the CPA (which is a body of independent appointed advisors) in the exercise of his custodial powers, save possibly in selected areas where he has the benefit of the counsel of other advisory bodies or experts. The CPA serves the President by giving him access to a group of experienced advisors. However, the CPA also plays the limited role of weighing in on the balance between the Elected President and the Government, in the sense that where the President intends to veto an intended action of the Government, then the position of the CPA will have a bearing on the finality of the President's position. If the President acts with the support of the CPA, his opposition is decisive; but where he acts against the advice of the CPA, his decision is liable to be overridden by Parliament under certain defined circumstances.

2.58 Sixth, the Elected President's role is a *reactive* one. His role is not to promulgate new policies for the country. In his custodial capacity, he is empowered to block specific initiatives by the Government. As noted in the description of the two-key safeguard mechanism that was coined in the First White Paper, it is the Prime Minister

and the Cabinet who hold the *first* key "and will take the initiative" while the President holds the *second* key – in order for the Government's initiative to be valid, the President "must concur".[103] This was amplified in the Parliamentary debates in August 1999 over issues raised by then President Ong Teng Cheong at a press conference. In the course of the debate, then Prime Minister Goh Chok Tong remarked as follows:[104]

> There should be no confusion. The true Constitutional position is very clear. The President exercises **custodial, not executive powers. Only the Government exercises executive powers**. Under the Constitution, the Cabinet shall have the general direction and control of the Government. In contrast, **the President's custodial powers are reactive** and blocking powers. The President does not have any executive power. [emphasis added]

2.59 Seventh, there should be a process to resolve logjams between the Government (which in this case refers to Cabinet, which almost invariably acts with the support of Parliament[105]) on the one hand and the President on the other.[106] Our constitutional framework remains rooted in the Westminster model of Parliamentary democracy. Legislative power remains vested in Parliament[107] and executive authority, as it pertains to the direction and control of the Government, is the province of the Cabinet which is headed by the Prime Minister who is almost always chosen from among the ranks of the party with the majority of the seats in Parliament.[108] Although the creation of the office of the Elected President has augmented this system by introducing an additional *check* on Parliament and the Cabinet, the Elected President did not, nor was it ever intended to, shift the locus of political power. Thus, there is a need for a mechanism that would enable Parliament, in limited circumstances, to override the President's exercise of the custodial powers. This is the reason and justification for the Parliamentary override. However, in order not to render the two-key safeguard mechanism ineffective, the bar for the Parliamentary override should not be set too low.

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103 See extract at paragraph 2.17 above.

104 *Singapore Parliamentary Debates, Official Report* (17 August 1999) vol 70 at col 2038 (Goh Chok Tong, Prime Minister).

105 Under the Westminster system, the Cabinet is almost invariably composed of members from the party (or parties, if a coalition Government is formed) which secured the most number of seats in Parliament.

106 This particular use of the expression "Government" was explained at footnote 38 above.

107 Article 38 of the Constitution.

108 Articles 23 and 24 of the Constitution.

Parliament would thus be able to override the President's veto only in specific instances, by way of a two-third majority vote and only when the President has acted against the advice of the CPA. It is in this respect that the CPA acts not only as an advisor to the President but also serves as a check on his power.

2.60 The Commission accepts that there is an undeniable tension between some of the foregoing principles, especially those pertaining to the President's historical role and the custodial role that was subsequently grafted on. This tension, which has been observed by many contributors and commentators, manifests itself in several ways. First, the President's historical role as a symbol of the country's unity is premised on the President being non-partisan. However in discharging the custodial role, the President faces the prospect of having to confront the Government of the day – a task which might appear to be at odds with a non-partisan unifying role. Further, the prospect of having to stand up to the Government necessitates an electoral mandate, in order to endow the President with the requisite legitimacy to do so. This requires that candidates undergo an intensely political and potentially divisive election process. It may fairly be asked whether a person who emerges victorious after a sharply contested election can convincingly lay claim to being the nation's symbol of unity. Finally, in terms of the President's eligibility criteria, the maximisation of his symbolic and unifying role suggests a premium on inclusivity, in particular with respect to matters such as minority representation, as well as the ability to relate to and connect with the general populace. In contrast, however, the custodial role entails a significant degree of exclusivity, particularly in relation to the requirement that the candidate possesses demonstrable experience in high office, in matters of policy and/or financial and technical expertise.

2.61 The Commission thus considers that one of its key tasks is to devise solutions that best mediate between the competing considerations in order that it may arrive at an acceptable compromise that secures, on the one hand, the President's role as a crucial symbol of national unity, and, on the other hand, adequately supports and vindicates the President's role as a custodian of the nation's reserves and the integrity of the Public Service. Both these roles remain fundamentally important.

CHAPTER 3

THE FRAMEWORK OF THE ELECTED PRESIDENT'S DISCRETIONARY POWERS

3.1 In this chapter, the Commission maps out a framework of the Elected President's *custodial roles* and the discretionary powers which advance them.[109] The focus is on those powers that have been *added* to those that were historically vested in the Head of State of Singapore before the inception of the Elected Presidency. This will better explain the context in which the Commission is to carry out its task and will also help clarify the sort of experience and expertise that the President and his advisors should possess, in order to effectively discharge the responsibilities of the office.

Three broad custodial roles introduced by the Elected Presidency

3.2 Broadly speaking, the custodial roles of the Elected Presidency fall into the following three broad categories:

a) fiscal guardian of the national reserves;

b) review of key public service appointments; and

c) other protective functions.

3.3 Closely intertwined with the President's custodial functions is the role played by the CPA which, as has been noted above, is established under the Constitution[110] to advise the President on the exercise of his discretionary powers.[111]

3.4 The following sections set out the President's functions and powers falling within each of these three categories, as well as the CPA's role in relation thereto. For

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[109] Article 21(2) of the Constitution sets out a number of areas in which the President may exercise his discretion.
[110] Article 37B of the Constitution.
[111] Article 37I of the Constitution.

the sake of clarity, it should be noted that whenever reference is made in this chapter to the override by Parliament in accordance with Articles 22(2), 22A(1A), 22C(1A) and 148D(1) of the Constitution, this refers to a decision of Parliament that is carried by a two-thirds majority to overrule a decision of the President, made contrary to a decision of the CPA, to refuse to make or revoke an appointment to a designated office or to withhold his assent to a Supply Bill, Supplementary Supply Bill or Final Supply Bill, as the case may be.

Fiscal guardian of the national reserves

3.5 As the fiscal guardian of Singapore's reserves, the Elected President has been endowed with discretionary powers over a wide range of fiscal matters. These powers can be divided into two sub-categories. The first are those for which the President's exercise of his discretion may, in certain circumstances, be overridden by Parliament. The second are those for which the President's exercise of his discretion is final and is not subject to be overridden under any circumstances.

3.6 The first category comprises veto powers which the President may exercise only after consulting the CPA. If the veto is exercised contrary to the CPA's advice, Parliament may override the veto by a two-thirds majority. The veto powers falling within this first category are the following:

a) The veto of any Supply Bill, Supplementary Supply Bill or Final Supply Bill, which is likely to lead to a draw down on past Government reserves.[112]

[112] Article 148A(1) of the Constitution. The Parliamentary override is provided for in Article 148D. It may be noted that there is a bypass mechanism in Article 148A(2) in the event the President's veto is not overridden by Parliament. In the case of a veto of a Supply Bill for a financial year, expenditure may nevertheless be authorised for any service or purpose for that financial year, if the expenditure does not exceed the total amount appropriated for that service or purpose in the *preceding financial year*. Similarly, in the case of a veto of a Supplementary Supply Bill or Final Supply Bill for a financial year, expenditure may nevertheless be authorised for any service or purpose, if the expenditure does not exceed the amount necessary to replace the amount advanced from any Contingencies Fund under Article 148C(1) for that service or purpose.

b) The veto of the appointment or the removal of the heads of key institutions that hold significant amounts of the national reserves which are listed in the Fifth Schedule to the Constitution ("**Fifth Schedule entities**").[113] Specifically, the President may veto the appointment or removal of:

i) The Chairman, member or Chief Executive Officer ("**CEO**") of a statutory board listed in Part I of the Fifth Schedule to the Constitution ("**Fifth Schedule statutory board**"), namely, the CPF Board, the Housing and Development Board, the Jurong Town Corporation and the Monetary Authority of Singapore.[114]

ii) A director or Chief Executive Officer of Government companies listed in Part II of the Fifth Schedule to the Constitution, namely GIC Private Limited, MND Holdings (Private) Limited and Temasek Holdings (Private) Limited.[115]

3.7 As regards the category of Presidential powers over fiscal matters which are *not* subject to Parliamentary override, these are listed in the table below.

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[113] The President's veto powers over the appointment and removal of the heads of the Fifth Schedule entities are more properly regarded as a facet of his fiscal guardian function, rather than his function as guardian of the public services' integrity. This was alluded to in the Second White Paper at ¶¶15–19.

[114] Article 22A(1) of the Constitution. Parliamentary override is provided for in Article 22A(1A).

[115] Article 22C(1) of the Constitution. Parliamentary override is provided for in Article 22C(1A).

	Power	**CPA's role**
(a)	Veto of • budgets / supplementary budgets of Fifth Schedule entities;[116] and • proposed transactions of Fifth Schedule entities that are likely to draw on the entity's reserves accumulated prior to the Government's current term of office.[117]	President is obliged to consult the CPA before exercising these powers.
(b)	Concurring with the Minister for Finance on the expected long-term real rates of return, for the purpose of delineating the reserves deemed not to have been accumulated prior to the Government's current term of office.[118]	
(c)	Veto of any Bill passed by Parliament providing for borrowing of money, giving of a guarantee or raising of a loan, if that Bill is likely to draw on Government reserves accumulated prior to the Government's current term of office.[119]	
(d)	Concurring with any Parliamentary resolution for ad hoc expenditures on account before a Supply law is passed for the year, or a resolution authorising extraordinary expenditures in circumstances of urgency.[120]	President is not obliged to consult the CPA before exercising these powers.
(e)	Veto of proposed transactions of the Government that are likely to draw on Government reserves accumulated prior to the Government's current term of office.[121]	

3.8 It is evident that the President is obliged to consult the CPA before exercising *some* of these fiscal powers, but not others. The rationale for this dichotomy is not immediately apparent. Insofar as the Parliamentary override is concerned, there is no clearly defined rationale as to why some fiscal decisions of the President may be overridden but not others, when the latter may potentially have an equally significant

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116 Articles 22B(2) & 22D(2) of the Constitution. There is a bypass mechanism in Articles 22B(3) and 22D(3): if the President vetoes the budget for a financial year and a revised budget is submitted, but that revised budget is also vetoed, the Fifth Schedule entity may, during that financial year, incur total expenditure not exceeding the amount provided in the budget approved for the *preceding financial year*.

117 Articles 22B(7) & 22D(6) of the Constitution.

118 Article 142(1A) of the Constitution.

119 Article 144(2) of the Constitution.

120 Article 148B(3) of the Constitution.

121 Article 148G(3) of the Constitution.

impact on the nation.

Review of key public service appointments

3.9 In conjunction with his role in reviewing key public service appointments, the Elected President has the power to veto any proposed appointment or removal of key officeholders in the Public Service (including the Chief Justice, Attorney-General, Chairman and members of the PCMR).[122] The President is obliged to consult the CPA before exercising his veto power in this respect and if the President acts contrary to the CPA's advice, his decision is open to being overriden by Parliament.[123]

Other protective functions

3.10 Finally, the Elected President has certain protective functions. These include the power to:

a) withhold concurrence for the detention or continued preventive detention of a person under the ISA, when the Advisory Board has recommended the person's release;[124]

b) cancel, vary or confirm a restraining order under the MRHA, when the Cabinet's advice is contrary to the recommendations of the Presidential

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[122] Article 22(1) of the Constitution. Parliamentary override is provided for in Article 22(2). The full list of appointments comprises: (a) the Chief Justice, Judges of the Supreme Court, and the Judicial Commissioners, Senior Judges and International Judges of the Supreme Court; (b) the Attorney-General; (c) the Chairman and members of the Presidential Council for Minority Rights ("PCMR"); (d) the chairman and members of the Presidential Council for Religious Harmony; (e) the chairman and members of an advisory board constituted to advise on detentions under the ISA; (f) the Chairman and members of the Public Service Commission; (fa) a member of the Legal Service Commission (other than an ex-officio member); (g) the Chief Valuer; (h) the Auditor-General; (i) the Accountant-General; (j) the Chief of Defence Force; (k) the Chiefs of the Air Force, Army and Navy; (l) a member (other than an ex-officio member) of the Armed Forces Council; (m) the Commissioner of Police; and (n) the Director of Corrupt Practices Investigation Bureau ("CPIB").

[123] Article 21(3) of the Constitution.

[124] Article 21(2)(*g*) of the Constitution.

Council for Religious Harmony;[125] and

c) concur with CPIB initiating or continuing its investigations into any matter, even where the Prime Minister has refused to consent to such investigations.[126]

3.11 The President is not obliged to consult the CPA in exercising the powers that fall within this category.[127]

3.12 For completeness, it may also be noted that Article 5(2A) of the Constitution states that any Bill seeking to amend, among other things, any provision in Part IV of the Constitution (*ie*, those pertaining to fundamental liberties) must be supported by at least two-thirds of the votes at a national referendum, *unless the President, acting in his discretion, directs otherwise.* At present, however, the operation of Article 5(2A) and that of Article 5A(1), which grant the President the power to withhold his assent to, among other things, any Bill which curtails his discretionary powers, remain suspended.[128]

The three aspects of the Terms of Reference

3.13 Against the background set out above, the next three chapters will consider the Terms of Reference of the Commission. Broadly, the Terms of Reference require consideration of 3 broad aspects of the Elected Presidency:

a) The first aspect: The eligibility criteria for Presidential candidates.

b) The second aspect: The election of minorities to the office of President.

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125 Article 21(2)(*h*) of the Constitution. The President has to act in accordance with Cabinet's advice if the Cabinet's proposal is in accord with the advice of the Presidential Council for Religious Harmony: see section 12(3) of the MRHA.

126 Article 22G of the Constitution.

127 Article 21(4) of the Constitution.

128 The presently suspended entrenchment also affects fundamental liberties. One of the categories of Bills caught by Article 5(2A) is anything that seeks to amend Part IV of the Constitution, which relates to fundamental liberties: see Article 5(2A)(*b*) of the Constitution.

c) The third aspect: The role and composition of the CPA.

3.14 These will be addressed respectively in Chapters 4, 5 and 6 below.

CHAPTER 4

THE FIRST ASPECT: ELIGIBILITY CRITERIA FOR PRESIDENTIAL CANDIDATES

Current eligibility criteria

4.1 Article 19(2) of the Constitution, the text of which is reproduced at **Annex C**, sets out the criteria that a person must satisfy in order to be eligible for election to the Presidency.

a) The general requirements are that the person must:
   i) be a Singapore citizen; [129]
   ii) be at least 45 years old;[130]
   iii) be in the current register of electors and be resident in Singapore on the date of nomination and have been resident in Singapore for at least 10 years prior to that;[131] and
   iv) not be subject to certain disqualifications stipulated in Article 45(1) of the Constitution.[132]

b) The person must satisfy the PEC that he is a person of "integrity, good character and reputation".[133]

c) The person must not be a member of any political party on the date of

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129 Article 19(2)(*a*) of the Constitution.
130 Article 19(2)(*b*) of the Constitution.
131 Article 19(2)(*c*) read with Article 44(2)(*c*) and (*d*) of the Constitution.
132 For example: he must not be of unsound mind (see Article 19(2)(*d*) read with Article 45(1)(*a*) of the Constitution); he must not be an undischarged bankrupt (see Article 19(2)(*d*) read with Article 45(1)(*b*) of the Constitution); and he must not have been convicted of a crime in Singapore or Malaysia in respect of which he had been sentenced to imprisonment for a term of more than one year or to a fine of more than $2,000, for which he has not received a pardon (see Article 19(2)(*d*) read with Article 45(1)(*e*) of the Constitution).
133 Article 19(2)(*e*) of the Constitution.

nomination.[134]

d) The person must, for a period of at least 3 years, have held one of the offices specified in Article 19(2)(*g*) of the Constitution ("**qualifying offices**"). The qualifying offices are:

i) One of the key public service appointments (namely, Minister, Chief Justice, Speaker of Parliament, Attorney-General, Chairman, PSC, Auditor-General, Accountant-General or Permanent Secretary): limb (i) of Article 19(2)(*g*).[135]

ii) Chairman or CEO of a Fifth Schedule statutory board: limb (ii) of Article 19(2)(*g*).[136]

iii) Chairman or CEO of a company incorporated or registered under the Companies Act[137] with a paid-up capital of at least $100 million: limb (iii) of Article 19(2)(*g*).[138]

iv) Any other "similar or comparable position of ***seniority and responsibility*** in any other organisation or department of equivalent ***size or complexity*** in the public or private sector" [emphasis added] which would have given him "experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President": limb (iv) of Article 19(2)(*g*).[139]

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134 Article 19(2)(*f*) of the Constitution.
135 Article 19(2)(*g*)(i) of the Constitution.
136 Article 19(2)(*g*)(ii) of the Constitution.
137 Companies Act (Cap 50, 2006 Rev Ed).
138 Article 19(2)(*g*)(iii) of the Constitution.
139 Article 19(2)(*g*)(iv) of the Constitution.

4.2 A person wishing to run for President must meet the eligibility criteria set out in Article 19(2) and must obtain from the PEC a certificate of eligibility ("**CoE**"), certifying that:[140]

(a) the PEC is satisfied that he is a person of integrity, good character and reputation; and

(b) where the candidate desires to contest the elections by virtue of being qualified under limb (iv), that the PEC is of the opinion that he has such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President.

4.3 As is clear from the foregoing, a candidate for the Presidency must, in addition to meeting the general requirements stipulated at paragraphs 4.1(a)–4.1(c) above, also have held a qualifying office stipulated in Article 19(2)(*g*). The first three limbs of Article 19(2)(*g*) prescribe entry routes that are *automatic* in nature in the sense that they refer to qualifying offices which, if held by the candidate, would automatically qualify him to run for the office of President. These positions are sufficiently senior, and they concern the leadership of entities which are likewise of sufficient size or complexity such that the holders of these offices are *deemed* to possess the requisite expertise for the Presidency. Limb (iv), on the other hand, is *deliberative* in nature. An office will only be found to be a qualifying office under limb (iv) if the position is *adjudged* by the PEC to be sufficiently senior and the entity of sufficient size or complexity to be regarded as one which is comparable to the qualifying offices in limbs (i) to (iii).[141]

4.4 It is evident from limb (iv) of Article 19(2)(*g*), that a qualifying office in the

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[140] Section 8 of the Presidential Elections Act (Cap 240A, 2011 Rev Ed).

[141] The Commission notes that Article 19(2)(*g*)(iv) of the Constitution refers to a *position* of "similar or comparable … seniority and responsibility" and to an *organisation or department* of "equivalent size or complexity". It is the Commission's view that "equivalent" in the latter context does not mean precise equivalence but in fact bears the same meaning as the expression "similar or comparable" used in the first clause. Although the words used are different, the Commission considers that it would be practically impossible to find two organisations that are precisely equal in size and complexity.

deliberative track is defined by two parameters:

(a) the entity in which the position is held must have sufficient size or complexity; and

(b) the position held must be sufficiently senior, conferring the requisite level of responsibility.

Presumably, it was thought that someone satisfying the requirements in both (a) and (b) would enhance the chances that the individual concerned would possess the requisite experience and expertise in managing financial affairs necessary to discharge the complex and substantial functions and responsibilities of the President.

4.5 As noted above, the Constitution charges the PEC with responsibility for deciding whether:

a) an applicant is a person of "integrity, good character and reputation", as required by Article 19(2)(*e*); and

b) an applicant who seeks to qualify under limb (iv) does *in fact* possess experience and expertise that would satisfy that limb.[142]

The need for the eligibility criteria to be sufficiently stringent

4.6 The eligibility criteria stipulated in respect of the automatic track to eligibility are stringent. This inevitably has an indirect effect on the criteria for the deliberative track as well, since a candidate seeking to establish eligibility under that track must demonstrate to the satisfaction of the PEC that he possesses experience and expertise that are *comparable* in nature (even if they need not be identical) to what those who qualify under the automatic track are deemed to have. Limb (iv) of Article 19(2)(*g*) is more flexible in the sense that it does not exclude those who fail to meet the explicit requirements set out for the automatic track. But this does not mean that it sets a *less stringent* threshold. The difference lies in the fact that under the automatic track, the

[142] Article 18(1) of the Constitution.

PEC has no role in assessing the applicant's qualifications; whereas under the deliberative track, the PEC must go into the details of the applicant's professional background and then assess whether he is qualified to discharge the functions of the Presidency. As noted above, these are stringent criteria and, in the Commission's judgment, this is rightly so.

4.7 A number of contributors raised the objection that the President's eligibility criteria are even more stringent than those for the office of Prime Minister.[143] The Commission notes that the same objections were made to, and rejected by, the Select Committee (see paragraphs 2.41–2.42 above). The Commission agrees with the points made in the 1990 Select Committee Report and considers that this argument is premised upon a false comparison between the offices of President and Prime Minister, thereby giving rise to the erroneous conclusion that the constitutionally-prescribed eligibility criteria for each office should be the same.

4.8 At the outset, it should be noted that the office of Prime Minister is central to the Westminster system of Parliamentary democracy, where it is a cherished value that any adult member of the electorate, who is not subject to a disqualification, is able to run for a seat in Parliament. In the Westminster system, the Prime Minister is selected from among the Members of Parliament so elected. It would not be possible to impose stringent eligibility criteria upon those seeking election to Parliament without doing considerable violence to the Westminster system. The Elected Presidency, on the other hand, is not part of the Westminster system; instead, it was created as a refinement of this model and it was necessitated by our unique circumstances (see paragraphs 2.12–2.17 and 2.54 above). For the reasons which are set out in the following paragraphs, the Commission considers the imposition of eligibility criteria to be a *necessity* if the office is to continue to function in a meaningful way. Significantly, the contributors who appeared to support doing away with eligibility criteria altogether were few and far between. For the most part, the objection was against the criteria being set "too high", although it was not clear what precisely this meant.

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[143] Written submissions of Assoc Prof Eugene Tan; Asst Prof Jack Lee; Dr Kevin Tan; Jennifer Teo Zhi Hui, Rachel Lui Shu Hui, Yip Jian Yang & Choo Ian Ming.

4.9 It should also be noted that the process for selecting a Prime Minister is very different from that by which the President is elected. The Prime Minister will generally be from the political party which wins the majority of the seats in Parliament. He would have been chosen by his party to be its standard bearer and hence must have the confidence of the party. Additionally, he would also need to command the support of the majority of the Members of Parliament. Therefore, as was noted in the 1990 Select Committee Report:[144]

> Only the most outstanding party leaders are likely to become Prime Minister. He is chosen by his peers and colleagues, ie people who know him well, if not intimately, and not directly by the people who only know him from the media or hearsay. One becomes a Prime Minister only after passing many stringent tests of leadership.

4.10 In contrast, the President is elected into office directly by the public. The electorate votes for the President based on what it knows of him from publicly-available sources. What the average voter would know about Presidential candidates cannot possibly be compared, much less equated, with what Parliamentarians can be expected to know about Prime Ministerial candidates. Furthermore, unlike an aspiring Prime Minister contesting a Parliamentary election, the President should not propose an electoral agenda of policies because that is not the President's function.[145] Hence, the choice that voters make is not one that is open to being informed by the strength of the candidates' electoral agenda.

4.11 It may be noted that when the point was canvassed more thoroughly during the oral hearings, several of the contributors who originally raised concerns about the stringency of the Presidential eligibility criteria agreed that comparison with the criteria applicable to the office of Prime Minister might not be appropriate.[146]

4.12 Additionally, the Commission considers that stringent eligibility criteria for Presidential candidates are necessary for several other reasons. First, while Parliament

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144 1990 Select Committee Report at ¶12.

145 See the discussion at paragraph 2.58 above.

146 Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 24); Dr Kevin Tan (Transcripts for 6 May 2016 at pp 36–37).

acts on the basis of the support of a majority of its members, the President is able to single-handedly block the initiatives of the elected Government. This arrangement vests considerable power in the hands of a single individual. The President's ability to block the Government's desire to access past reserves or to make key public service appointments has far-reaching ramifications. Just as a Government that misuses the past reserves or makes politically-motivated appointments to the senior ranks of the Public Service will cause serious damage to the nation, so, too, will a President who indiscriminately or unwisely exercises his custodial powers. The Commission considers that this risk might not have been sufficiently appreciated by those opposed to revising the eligibility criteria. The Commission further considers that those who advocated that the criteria be lowered might not appreciate the considerable power that is vested in the Elected President. Hence, it seems only sensible to require that one seeking to be elected should at least have a record suggesting that he has the technical competence and expertise to discharge the functions and exercise the powers of the Presidency appropriately and effectively.

4.13 Second, the President is likely to encounter complex issues, some of a highly technical nature, when discharging his custodial powers. His fiscal powers require him to understand the underlying economic case for financial proposals of an enormous scale, and assess whether those proposals should be endorsed. He would also need to have a grasp of macroeconomic concerns when considering whether to approve Supply Bills; and he would need to understand the operation of statutory boards and Government companies when approving their budgets. His role in reviewing key public service appointments is also demanding. He must possess the wisdom to assess the competence and character of candidates for positions in the highest echelons of the Public Service. Finally, he would have to deal deftly with the "contrary pulls and pressures"[147] involved in maintaining security and public order in a multiracial nation when he is called upon to exercise his protective functions under the ISA and the MRHA. Discretion in these areas cannot meaningfully be exercised by someone without the requisite experience and expertise. To ensure that candidates for the

[147] The expression "contrary pulls and pressures" was used in the First White Paper at ¶18(d).

Presidency are suited to bear responsibilities of such a scale and magnitude, the eligibility criteria for an applicant to qualify as a candidate must be suitably rigorous.

4.14 Third, stringent eligibility criteria help to temper any politicisation of the Presidential office and of the election process. Much attention has been paid in recent years to the custodial role of the Elected President. As a result, the fact that the President has historically played a critical symbolic and unifying role has not received comparable attention. If the President is to have custodial powers and functions, it seems likely that he will have to be elected by popular vote in order to have the mandate to block the Government. However, the election process has the potential to become politicised and highly divisive. Given that the President is vested with the power to block the elected Government's agenda, issues such as the candidate's character as well as his competence and expertise – both of which are inextricably linked to the question of whether an individual can be *trusted* with such powers – are likely to rise to the fore in an election. A divisive electoral contest where candidates attack one another on these issues could impinge on the eventual victor's ability to effectively discharge his historical role as a symbol of national unity. Therefore, it is desirable, if not necessary, to avoid the politicisation of the Presidential election process. In the Commission's view, one way in which this can be achieved is through the stipulation of stringent eligibility criteria.

4.15 With the PEC playing the role of scrutinising the candidate's character and experience, the significance of potentially divisive electoral issues such as character, competence and expertise would be minimised.[148] While the introduction of such eligibility criteria cannot entirely eliminate these issues from arising, it will likely reduce the prospect that candidates will target their campaigns at their opponent's character and qualifications, since each candidate who qualifies would have satisfied the PEC that they possess those traits.

4.16 It is true that the Constitution empowers the President only to approve or veto

[148] As explained at paragraphs 4.91–4.92 below, the Commission is proposing to strengthen the PEC's membership.

the Government's proposals. For example, one contributor described the fiscal responsibility of the President as involving only a "binary" or a yes-or-no judgment.[149] However, the Commission considers that such a view oversimplifies the scale of the responsibilities, functions and powers that are vested in the President. In particular, it masks the fact that in relation to the fiscal powers, the President will have to understand and analyse the proposal in question, take into account multiple considerations (including the potential risk to the reserves and the benefits secured by permitting the drawdown) and then make an evaluation before arriving at a final decision. That decision may potentially have an immense impact and significance on national interests. It would be helpful to have regard to the examples where the fiscal powers have had to be invoked, which are set out at paragraph 4.57 below, to better appreciate this point. In the Commission's view, the President's powers and responsibilities are far more complex than some assumed them to be, and necessitate that the office be held by a person with the requisite experience to discharge the President's custodial role over the reserves.

4.17 The same contributor suggested that there need not be undue concerns over the President not having the competence to exercise the relevant financial judgment, since he would be able to rely on the expertise of the CPA.[150] The Commission does not consider this to be a satisfactory solution. The President himself should have the requisite experience to assess the CPA's recommendations and ultimately form his own independent judgment. Experience in a qualifying office will stand him in good stead to put the right questions to the CPA, test any assumptions the CPA might make, and identify any gaps in its reasoning. Put simply, a highly qualified CPA is no substitute for the President himself possessing the requisite experience and expertise. Furthermore, if the President were to place excessive reliance on the CPA to make the relevant judgments where his custodial powers are implicated, this would shift the constitutional balance so that it would be the CPA, and not the President, driving the exercise of these powers. At least as matters now stand, this would be inimical to the

[149] Oral representations of Dr Kevin Tan (Transcripts for 6 May 2016 at pp 25 and 34).
[150] Oral representations of Dr Kevin Tan (Transcripts for 6 May 2016 at pp 31–32).

framework contemplated in the Constitution, because it will vest considerable power in the hands of an unelected body of members.

The need to refresh and update the eligibility criteria periodically

4.18 Given the importance of having stringent eligibility criteria for Presidential candidates, the Commission also sees the need to ensure that such criteria are updated periodically to keep pace with changing circumstances. These matters are addressed in this section.

4.19 As explained at paragraph 4.3 above, the qualifying offices in Article 19(2)(*g*) fall into two main categories:

(a) The automatic track, prescribed in limbs (i) to (iii) of Article 19(2)(*g*):
This covers qualifying offices where the applicants are, in effect, *deemed* to possess the requisite experience and expertise by virtue of having held that office for the minimum period of 3 years.

(b) The deliberative track, under limb (iv) of Article 19(2)(*g*):
This covers qualifying offices where the applicants will qualify only upon satisfying the PEC that the office they have held is of a comparable nature to those held by persons who qualify under the automatic track. This entails that applicants must have held a position of sufficient level of seniority and responsibility in an entity of equivalent size or complexity to those falling within limbs (i) to (iii).

4.20 In relation to the automatic track, the PEC does not exercise subjective judgment insofar as the applicant's experience and expertise is concerned. For example, the private-sector qualifying offices under limb (iii) of Article 19(2)(*g*) are defined by reference to the candidate's company meeting a specific quantitative threshold. The Commission considers that this was chosen as a proxy for the sort of experience and expertise that the candidate would have acquired through his work with a company of such a size. The automatic nature of the qualifying routes in limbs (i) to (iii) of Article 19(2)(*g*) thus justifies having thresholds that are pegged at an appropriately

rigorous level, to reduce the risk that persons without the experience suited to the exacting tasks of the President might nonetheless qualify to seek the office. These rigorous thresholds are indirectly relevant to the deliberative track in limb (iv), where qualification is not automatic, but instead depends on a granular assessment of the candidate's actual experience and expertise, benchmarked against that which may be expected of those who had occupied a qualifying office under the automatic track.

4.21 Given the significance of the list of qualifying offices for both the private and public sector in automatically establishing eligibility, it is critical that the thresholds for the qualifying offices remain relevant and are updated periodically. Quantitative thresholds cannot remain fixed in perpetuity for the self-evident reason that the economic situation in a country, or, for that matter, even the value of money in real terms, does not remain static. A quantitative threshold set some decades ago is simply not likely to be meaningful today.

4.22 Concerns were raised by a number of contributors that tightening the eligibility criteria would "shrink the pool of potential candidates".[151] However, when some of these contributors were asked (in the course of oral representations) for numbers that would signify a pool of an acceptable size, they did not venture to proffer any suggestions.[152] The Commission considers that an undue focus on the size of the pool is a distraction from the real task at hand, which is to ensure that candidates possess the requisite qualifications to satisfactorily discharge the responsibilities of the office. The Commission considers that the eligibility criteria should be set at a level where they serve as an effective proxy to best capture individuals who are likely, in fact, to have the requisite experience and expertise. The criteria should not be manipulated so as to artificially increase (or reduce) the size of the pool of candidates, or to achieve any other collateral purpose. In any event, applicants who fail to meet the thresholds set out

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[151] See, for example, the written submissions of Assoc Prof Eugene Tan; the Eurasian Association; Asst Prof Jack Lee; Dr Kevin Tan.

[152] Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 18); Oral representations of the Eurasian Association (Transcripts for 22 April 2016 at pp 9–10); Oral representations of Asst Prof Jack Lee (Transcripts for 26 April 2016 at pp 112–113); Oral representations of Grace Teo Pei Rong, Carina Kam Zhi Qi & Amelia Chew Sihui (Transcripts for 6 May 2016 at p 99).

in limbs (i) to (iii) of Article 19(2)(*g*) may nonetheless seek to qualify under the deliberative track in limb (iv) on a case by case basis, subject to evaluation by the PEC.

4.23 In the following paragraphs, the qualifying offices are considered in greater detail.

Public-sector qualifying offices: Limb (i) of Article 19(2)(*g*)

4.24 Under limb (i) of Article 19(2)(*g*), a person who has held the office of Minister, Chief Justice, Speaker of Parliament, Attorney-General, Chairman, PSC, Auditor-General, Accountant-General or Permanent Secretary, for at least 3 years, would automatically qualify to contest in Presidential elections, provided he satisfies the other requirements set out at paragraphs 4.1(a)–4.1(c) above.

4.25 Some contributors pointed out that not everyone who has held the abovementioned public-sector offices would necessarily have helmed agencies with large budgets.[153] The suggestion was that while the candidates who qualified through the private-sector route would have managed organisations of considerable size, the same could not be said for all candidates who qualified through the public-sector route. The Commission considers that although the private- and public-sector routes to qualification are both targeted at identifying persons with the relevant skillsets, no single office is ever likely to endow the holder of that office with *all* the attributes necessary for him to discharge *all* the Presidential functions. Hence, it may not be correct to compare the two routes as if they are precisely alike.

4.26 Limb (i) of Article 19(2)(*g*) serves as a proxy to capture individuals who may often have different traits from those likely to have been acquired through experience in the private-sector qualifying offices in limb (iii) of Article 19(2)(*g*). These are skills which are likely to be unique to the public sector. This was a point made in the First White Paper, where reference was made to the fact that public-sector applicants would

[153] Written submissions of Dr Kevin Tan.

have experienced "the contrary pulls and pressures of government decision-making".[154]

4.27 The Commission notes the complex and sensitive policy issues that might arise in the context of a multi-racial society, where the interests of different segments of the population may pull in different directions. The senior public officers identified in limb (i) of Article 19(2)(*g*) would have managed and led substantial organisations with sizeable workforces and would likely also have acquired experience in dealing with complex matters having a wide-reaching public dimension that would enable them to understand and assess the balance between the *costs* of Government initiatives that would need to draw on the reserves against their expected *benefits*.[155] It is unsurprising in the circumstances that the existing list of public-sector offices under this limb is tightly drawn. It may be noted that the number of surviving persons who have, since January 2001, held one or more of the offices falling within this limb (excluding former Auditors-General and Accountants-General) for at least 3 years, is around or just over 70.

4.28 On balance, the Commission considers that the list of public-sector offices can be maintained, with one minor revision. The Commission proposes the removal of the offices of the Accountant-General and the Auditor-General from the list. The Commission considers that this would be appropriate because limb (i) of Article 19(2)(*g*) is meant to capture individuals who have had experience dealing with matters of wide public import. However, the scope of these two offices and the extent of the responsibilities borne by their holders do not, in the Commission's view, justify *automatic* qualification. These positions are not necessarily held by civil servants with the rank of Permanent Secretary. The Accountant-General is responsible for ensuring the existence of robust financial *systems and processes* to steward public funds while

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[154] See paragraph 2.20 above.

[155] The importance of experience in managing large operations was noted in the 1990 Select Committee Report at ¶14(c):

> "The Committee agrees that Judges and Judicial Commissioners can be excluded from the list. Their duties, though highly responsible, are **not directly related to handling finances or managing large operations**." [emphasis added]

the Auditor-General, as the national auditor, is responsible for maintaining and enhancing accountability in the management and use of public funds. Both these officeholders play an indispensable but ultimately ancillary (and comparatively narrow) role in the delivery of public goods and services. They are not required to grapple with the "contrary pulls and pressures of government decision-making" that have been referred to.[156] Therefore, the Commission considers that they should not be *automatically* taken to possess the type of experience which others who qualify under limb (i) of Article 19(2)(*g*) are deemed to possess.

4.29 As against this, one contributor suggested that the list of public-sector qualifying offices in limb (i) of Article 19(2)(*g*) should be *broadened* to include:[157]

(a) sub-Cabinet appointees such as Ministers of State (and not just full Ministers);
(b) Members of Parliament who have served for a given number of years and are non-partisan;
(c) senior members of the Judiciary (beyond the Chief Justice); and
(d) other high-ranking public servants, such as senior ambassadors and Superscale civil servants (not limited to Permanent Secretaries).

4.30 The Commission does not agree with this. The Commission considers that limb (i) of Article 19(2)(*g*) should capture those officers who are the most senior in their respective organisations. (In like vein, the Commission's position in respect of the private-sector qualifying offices in limb (iii) of Article 19(2)(*g*) is that it should not encompass senior officers ranking below the most senior executive: see paragraphs 4.63–4.65 below.) It is these officers who bear the ultimate weight of responsibility for the performance of the organisation in question, and it is this unique facet of leadership

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[156] The Commission notes that Article 148G of the Constitution requires the Auditor-General and the Accountant-General to inform the President of any proposed transaction by the Government which, to their knowledge, is likely to draw on past reserves. This emphasises the technical aspect of their work. However, the technical assessment of whether a drawdown on reserves *has taken or will take place* is quite different from forming a judgment as to whether that drawdown *should* be permitted.

[157] Written submissions of the Association of Women for Action and Research ("AWARE").

that qualifies them to hold Presidential office.[158]

4.31 It may be noted that the contributor in question that advocated this suggestion later accepted that the submission was driven by the desire to widen the pool of candidates for the Presidency and, in particular, to increase the number of eligible women candidates.[159] Once again, the Commission emphasises that the eligibility criteria should not be revised in order to achieve collateral goals (such as increasing the representation of minorities or, for that matter, of any other group). The central purpose of having eligibility criteria is to enhance the prospect that only candidates with the right experience and expertise to ably discharge the exacting responsibilities of the President will be able to seek election. Any revision of the eligibility criteria should be undertaken solely with this goal in mind.

4.32 The Commission also considered whether performance criteria should be introduced as an additional metric for those seeking qualification under limb (i) of Article 19(2)(*g*). As will be elaborated at paragraphs 4.66–4.67, the Commission proposes that profitability thresholds be set for *private*-sector applicants who seek qualification under limb (iii) of Article 19(2)(*g*). However, the Commission considers that public-sector applicants who have held qualifying offices under limb (i) should *not* be subject to a similar performance assessment by the PEC.

4.33 The primary reason for this differentiation in relation to public-sector candidates is that there are no *measurable standards* against which their performance may be assessed.[160] By contrast, the performance of executives in the private sector may be

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[158] Less senior public-sector officers such as those proposed at paragraph 4.29 above would not be precluded from seeking to persuade the PEC of their suitability to contest in the Presidential elections, pursuant to the deliberative track offered by limb (iv) of Article 19(2)(*g*), as explained at paragraphs 4.68–4.71 below.

[159] Oral representations of AWARE (Transcripts for 18 April 2016 at p 131).

[160] It is true that the performance of public-sector entities can, to some limited extent, be measured by referring to such things as the Auditor-General's findings and the extent to which the entity in question meets its own targets (for instance, the Supreme Court sets targets on the time within which an action commenced in the Supreme Court should be concluded). However, the Commission considers that these performance indicators are likely to capture only a part of the work of the public-sector entity in question. These indicators may say nothing of the success of policies that the public entity in question may

assessed (albeit imperfectly) through, for example, the profitability, revenue, or other financial performance indicators of the companies they helm. If, in order to overcome the lack of such objective criteria, recourse were then had to a subjective assessment of the candidate's performance in the public office, this would detract from the clear and objective standard that the automatic track, including limb (i), is meant to provide.

4.34 Rather, the Commission proposes to leverage on an alternative sift, by way of doubling the duration which applicants must have served in the qualifying office, from the current term of 3 years to 6 years. This attempts to capture at least some elements of the applicant's performance. The length of time spent in an office can be an indirect indication of that person's success in discharging the responsibilities of that office, tending to filter out those who were either removed or not re-appointed because they had been found wanting.

4.35 Furthermore, as is elaborated below at paragraph 4.87, the Commission proposes that to facilitate the flow of information to the electorate, all applicants (including those seeking qualification under the automatic track provided for under limb (i) of Article 19(2)(*g*)) be required to provide a reasonably detailed qualitative description of the work done, experience gained and any notable accomplishments during the tenure in the qualifying office within the application form for a CoE. It may be noted that the Commission also proposes that candidates who have successfully obtained the CoE should be required to disclose their application forms to the public. This information would therefore be available to the electorate.

<u>Qualifying offices in the Fifth Schedule entities: Limb (ii) of Article 19(2)(*g*)</u>

4.36 Under limb (ii) of Article 19(2)(*g*), a person who has been the Chairman or CEO of a Fifth Schedule statutory board for at least 3 years would automatically qualify to contest in Presidential elections (provided he satisfies the other requirements set out at paragraphs 4.1(a)–4.1(c) above).

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introduce, which may also take a considerable time to bear fruit.

4.37 The Commission proposes that the terms "Chairman" and "Chief Executive Officer" in limb (ii) of Article 19(2)(*g*) be replaced with a more general reference, such as "the most senior executive position of the statutory board, however that office may be titled". The reasons for this proposal are explained in greater detail at paragraphs 4.63–4.65 below, where the Commission makes a similar proposal in respect of limb (iii) of Article 19(2)(*g*).

4.38 The Commission does not propose that those who have held the qualifying offices under limb (ii) of Article 19(2)(*g*) should be subject to a performance assessment by the PEC. This is because the offices which fall within this limb are in the public sector and the reasons given for rejecting a performance assessment of applicants seeking qualification under limb (i) of Article 19(2)(*g*) at paragraphs 4.32–4.33 above also apply here. Fifth Schedule statutory boards discharge a public function and they have a duty to advance the public interest. Their objects differ from those of private companies, where profit-maximisation tends to be the primary goal in the vast majority of instances. The Commission therefore considers that profitability, and other indicators normally used to measure the economic success of private companies, are of limited utility in measuring the success of a Fifth Schedule statutory board. However, as with limb (i), the Commission proposes that the duration for which applicants should have held the qualifying offices under limb (ii), be doubled from the current term of 3 years to 6 years.

4.39 One contributor suggested that, rather than having an exhaustive list of qualifying statutory boards, eligibility should also be extended to applicants who have held apex positions in any institution (including any statutory board) that satisfies a minimum budgetary criterion.[161] The Commission does not agree with this proposal. The statutory boards listed in the Fifth Schedule of the Constitution were chosen because each controls a substantial part of the Government's assets and it was thought that individuals who helmed these organisations would have the requisite experience to discharge the President's role as custodian of the country's reserves. In this regard, it

[161] Written submissions of AWARE.

should be noted that the Fifth Schedule statutory boards are also those deemed important enough to be made subject to Presidential oversight (see paragraph 2.25 above). The Commission does not favour affording *automatic* qualification to applicants who have not had experience helming public-sector organisations of comparable size or complexity. Applicants seeking to justify their eligibility on the ground of their experience in these other organisations should be subject to the more detailed assessment provided for in the deliberative track in limb (iv) of Article 19(2)(*g*).[162]

4.40 Finally, the Commission notes that Article 22A(5) of the Constitution states that only statutory boards which have reserves in excess of $100 million may be added to Part I of the Fifth Schedule to the Constitution. The Commission is of view that if revisions are made to the quantitative threshold for private-sector companies in limb (iii) of Article 19(2)(*g*) pursuant to the Commission's proposals set out at paragraph 4.56 below, the quantitative threshold in Article 22A(5) should correspondingly be adjusted to the same level.

Private-sector qualifying offices: Limb (iii) of Article 19(2)(*g*)

4.41 Under limb (iii) of Article 19(2)(*g*), a person who has for a period of at least 3 years been the Chairman or CEO of a company incorporated or registered under the Companies Act with a paid-up capital of at least $100 million would automatically qualify to contest in the Presidential election (provided he also satisfies the other requirements that have been set out at paragraphs 4.1(a)–4.1(c) above).

4.42 In the speech delivered in Parliament on 27 January 2016,[163] Prime Minister Lee explained that the $100 million paid-up capital threshold was set in order

[162] The contributor which raised this suggestion also accepted that the submission was driven by the desire to widen the pool of candidates who may be deemed eligible to contest in Presidential elections and, in particular, to have more eligible women candidates: oral representations of AWARE (Transcripts for 18 April 2016 at p 131). As mentioned at paragraphs 4.22 and 4.31 above, the eligibility criteria should not be revised in order to achieve collateral goals. The central purpose of having eligibility criteria is to ensure that only candidates with the right experience and expertise can run for the office of President.

[163] See paragraph 1.1 above.

to help identify persons with "senior management competence and experience". He explained that Presidential candidates needed to have these qualities because: [164]

> … they have to assess and decide on financial proposals which will involve billions of dollars, and they must judge and decide to approve or reject appointments of people into posts which will involve running big organisations, making decisions, investing, managing and spending billions of dollars. The person who is making those decisions must understand what those decisions are, what is involved in that job before he can decide whether a person is fit to do that job or not, and before he decides whether a spending proposal is right or wrong, justified or otherwise.

Prime Minister Lee highlighted the possible need to revise the private-sector qualifying office criterion in limb (iii) of Article 19(2)(*g*), noting that the figure of $100 million might be outdated, after taking into account, among other things, inflation and the growth in the size of our reserves.

4.43 The Commission accepts that those who have helmed sufficiently large and complex private-sector companies are likely to be able to bring a variety of relevant skills to the office of President. They would have experience in fiscal matters and in management. They would also have made decisions involving large sums of money with potentially wide-ranging ramifications. They would likely have been responsible for a substantial workforce. With such experience, they would be more likely to understand and be in a position to evaluate the implications of complex proposals put forward by the Government involving large sums of money which impact the nation. Similarly, they would generally also be well-placed to assess and ask the right questions about persons being considered for very senior appointments. These are attributes that will stand the President in good stead should he be called upon to disagree with the Government on matters of importance.

4.44 To this end, it is a matter of critical importance that the criteria for private-sector qualifying offices in limb (iii) of Article 19(2)(*g*) be crafted in such a manner that they best assure that those who meet them will likely have these qualifications. In this respect, the Commission has reviewed the criteria for private-sector qualifying

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[164] *Singapore Parliamentary Debates, Official Report* (27 January 2016) vol 94 (Lee Hsien Loong, Prime Minister).

offices along the two broad parameters alluded to at paragraph 4.4 above.

(a) Nature of the company:

The first broad area of inquiry concerns the nature of companies which should fall within limb (iii). In this regard, the Commission considered the following: What indicators should be used to identify companies of sufficient size or complexity? Should the current $100 million paid-up capital threshold be retained? More fundamentally, should paid-up capital be retained as the key market indicator? Should other criteria be used? If other indicators are resorted to, what quantitative thresholds should they be pegged at?

(b) Nature of the position within the company:

The second broad area of inquiry concerns the types of the positions within the company that possess the requisite level of seniority and responsibility. The Commission considered the following: Which officeholders within a company should be deemed to qualify? Currently, the Chairman and CEO qualify. Should this class of positions be widened, retained or narrowed?

Nature of the company: Indicators of size or complexity

4.45 In the speech delivered in Parliament on 27 January 2016,[163] Prime Minister Lee alluded to the fact that a person's experience in having run a company with a paid-up capital of $100 million might no longer be a suitable indicator of fitness for the office of President, since that threshold was set at a very different time and in a different economic context. The profile of the companies that would have satisfied that criterion in 1991 is very different from the sort of companies that would be captured by an application of that criterion today, when there are many more such companies. Not all the companies with a paid up capital of $100 million would have the size or complexity that companies which satisfied threshold in 1991 did. Expressing agreement with a report prepared by the PEC following the last Presidential election in 2011, Prime Minister Lee questioned whether the $100 million threshold continued to "reflect

the original intent of the requirement"[165]

4.46 The Commission notes that in 1993, shortly after the Elected Presidency was introduced, there were approximately 80,000 Singapore-incorporated companies.[166] Of these, only 158, or 0.2%, met the $100 million paid-up capital criterion. In other words, in 1993, only persons who had been Chairmen or CEOs of the top 0.2% of companies (for at least 3 years) would have satisfied the requirements of limb (iii) of Article 19(2)(*g*).

4.47 Currently, there are approximately 300,000 Singapore-incorporated companies.[167] If these companies were ranked by the size of their paid-up capital, the 158th company would have a paid-up capital of approximately $1.6 billion,[168] or 16 times the $100 million threshold that was adopted when the Elected Presidency was first introduced. These 158 companies would comprise just 0.05% of the total number of Singapore-incorporated companies today (as compared to 1993, when the top 158 Singapore-incorporated companies made up 0.2% of the total). Extrapolating the 1993 percentage figure of 0.2% to today's context, the top 0.2% of Singapore-incorporated companies (in terms of paid-up capital) as at March 2016 would number about 600, with the smallest of these having a paid-up capital of approximately $431 million, which is more than four times the $100 million threshold set at the introduction of the Elected Presidency.[168]

4.48 These figures demonstrate that the commercial landscape that prevails today is vastly different compared to that in the early 1990s. This underscores the need to update the qualifying criteria.

4.49 The Commission considers that the pertinent issues to consider are:

(a) First, whether *paid-up capital* should be retained as the appropriate

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165 *Singapore Parliamentary Debates, Official Report* (27 January 2016) vol 94 (Lee Hsien Loong, Prime Minister).

166 The number of companies in 1993 is derived from company statistics available from SingStat, which were in turn provided by the then Registry of Companies and Businesses.

167 As at March 2016. Source: Accounting and Corporate Regulatory Authority ("ACRA").

168 Source: ACRA.

proxy for the size or complexity of the company (as opposed to other indicators, such as market capitalisation, shareholders' equity or net tangible assets).

(b) Second, the *numerical threshold* at which this proxy (whether it be paid-up capital or some other measure) should be set.

4.50 The Commission notes that the use of paid-up capital as a criterion has several advantages. First, it is convenient because the paid-up capital of all Singapore-incorporated companies, including exempt private companies, is known. An applicant's company can thus be benchmarked against the entire pool of Singapore companies, for a more comprehensive reflection of where it stands in this population.[169] Second, paid-up capital is also a stable measure, in that it does not fluctuate as much as other measures such as net assets or net revenue.

4.51 Yet, despite its convenience, paid-up capital may not provide an accurate measure of a company's *current* size or the value and complexity of its operations. Specifically, the paid-up capital of a company is a historical measure that might not reflect the depletion or accumulation of the company's assets or earnings over time. Unsurprisingly, several contributors suggested replacing or supplementing paid-up capital with other measures.[170]

4.52 The Commission considers that paid-up capital ought to be replaced with shareholders' equity, which it considers is a better proxy for a company's size and complexity. Unlike paid-up capital, shareholders' equity reflects the company's current (and not just its historical) recorded worth. A company might have had substantial paid-up capital at its inception, but its reserves may have significantly depleted over time if its growth stagnated and liabilities accumulated. Conversely, a company with

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[169] In comparison, only a fraction of Singapore-incorporated companies file their financial statements. Therefore, data such as shareholders' equity or revenue, which are gleaned from the financial statements, can be extracted from corporate filings for only a much smaller number of companies. Any ranking exercise based on these other indicators would thus be less comprehensive.

[170] Written submissions of Ranvir Kumar Singh; Dr Loo Choon Yong & Loo Choon Hiaw. Oral representations of Suppiah Dhanabalan (Transcripts for 6 May 2016 at p 7).

modest beginnings could have grown over time through asset enhancements and the accumulation of retained earnings, but elected all the while not to raise capital through share issuances, with the result that its paid-up capital remained constant. In both these cases, the companies' paid-up capital would be a poor reflection of their actual size. In contrast, use of shareholders' equity would more accurately reflect the present size or complexity of the two companies.

4.53 In selecting shareholders' equity as the preferred measure, the Commission also considered other possible indicators, such as a company's net tangible assets and its market capitalization.[171] As regards net tangible assets, the Commission observes that this is not as comprehensive a measure as shareholders' equity, in that the latter encompasses a broader class of assets (in particular, intangible assets that might have economic value, such as goodwill) and thereby better reflects the company's value. Furthermore, data on shareholders' equity of companies is relatively accessible in that it may be gleaned from corporate filings, allowing the company to be more comprehensively benchmarked against its peers. The Commission does not favour the use of market capitalization as a metric since it only applies to publicly-listed companies and, as will be explained at paragraph 4.61 below, the Commission does not propose to require that the qualifying office should be limited to one within a *publicly-listed* company. Furthermore, the Commission views shareholders' equity as a preferable measure to market capitalization because the latter may be susceptible to significant volatility generated by swings in trading behaviour and other forces which affect the securities market.

4.54 The Commission further proposes that the shareholders' equity of the company should be calculated by taking the average shareholders' equity value for the 3 consecutive financial years ending immediately prior to either:

(a) the point where the applicant ceased to hold the qualifying office; or

(b) Nomination Day for the Presidential election in question (if he still holds

[171] One contributor suggested a net tangible assets threshold of $1 billion, while another suggested a net tangible assets threshold of $500 million: written submissions of Ranvir Kumar Singh; Dr Loo Choon Yong & Loo Choon Hiaw.

the qualifying office when he applies for the CoE).

4.55 The Commission also received suggestions of other measures of size or complexity for private-sector entities. Some contributors suggested using revenue and/or the number of employees for this purpose.[172] The Commission is not in favour of using either of these. The revenue of a company can vary widely across different industries and sectors; its use would not yield a meaningful comparison of the complexity or scale of operations of companies across diverse settings. As for employee headcount, this could unfairly favour companies from labour-intensive industries. Quantitative thresholds based on these measures that *automatically* qualify aspiring candidates from companies that meet them, without regard to other facts, may therefore not be appropriate.

4.56 This leads to the question of the level at which the appropriate threshold of shareholders' equity should be set. In all the circumstances, the Commission considers that it should be set at the sum of $500 million. This sum is not one derived through a mathematical or formulaic exercise; indeed, the Commission acknowledges that there is a range of reasonable figures at which this threshold can be pegged. However, the Commission ultimately settled on the figure of $500 million having regard to several realities.

4.57 First, the potential drawdowns which the President may have to scrutinise can be huge, given the estimated size of the national reserves and the magnitude of economic forces which may potentially impact the nation.[173] The scale of the financial

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[172] Written submissions of Suppiah Dhanabalan.

[173] While the current actual size of the reserves is not made publicly available, the Commission notes that in 1999, then Senior Minister Lee Kuan Yew gave the figure of $150 billion:

> We started with a reserve of about $50 or $60 million in the kitty. We are now able to guard for the future of Singapore, and the troubles we may run into from time to time, over S$150 billion. It's not as big as the Saudi oil reserves, but it is not peanuts.

See *Singapore Parliamentary Debates, Official Report* (17 August 1999) vol 94 at col 2062 (Lee Kuan Yew, Senior Minister). Ten years after that, a 2009 article estimated the size of the Government Investment Corporations's assets as between US$100 to 330 billion: see

decisions that the President may have to grapple with is exemplified by the approvals granted by Mr S R Nathan during his term as President in the wake of the 2008 Global Financial Crisis. In January 2009, Mr Nathan approved the Government's proposed drawdown of *$4.9 billion* from the past reserves to fund the Jobs Credit Scheme and the Special Risk-Sharing Initiative.[174] A few months before that, in October 2008, Mr Nathan approved a *$150 billion* guarantee on all bank deposits in Singapore, to be backed by Singapore's reserves.[175] There may be times when the President has to make these large and complex financial decisions on an urgent basis, without the benefit of time for lengthy deliberation and consideration.[176]

4.58 Second, in order to make decisions of such a scale and magnitude, and to shoulder the responsibility that comes with them, Presidential candidates must have *both* (a) the financial knowledge to comprehend the intricacies of the various proposals and (b) the confidence that comes with a certain degree of familiarity with making decisions involving very large sums of money. This was recognised by a number of contributors, one of whom observed that the President had to be a person who had developed a "feel" for handling large sums of money.[177] Another noted that to safeguard the financial reserves of the nation, the candidate must be someone who had exercised responsibility in financial matters and who had actual experience in handling the financial affairs of a large entity.[178]

Martin A Weiss, "Sovereign Wealth Funds: Background and Policy Issues for Congress" in *Sovereign Wealth Fund* (Thomas N Carson & William P Litmann, gen eds) (Nova Science Publishers, 2009) at p 10.

174 The former was a wage subsidy to keep workers employed; the latter was a policy designed to loosen credit flow to assist cash-strapped businesses: see Chua Mui Hoong, "Turning of the Second Key Went Smoothly", *The Straits Times* (20 February 2009).

175 Chua Mui Hoong, "Turning of the Second Key Went Smoothly", *The Straits Times* (20 February 2009).

176 It took only 11 days to secure Mr S R Nathan's approval for the $4.9 billion from the past reserves to fund the Jobs Credit Scheme: see Loh Chee Kong, "'Why I said okay in 11 days': President Nathan", *Today* (18 February 2009).

177 The contributor argued that "everything [the President] touches will be [in] billions" and that "the numbers have no meaning" to someone who is not used to making financial decisions of that scale: oral representations of Dr Loo Choon Yong & Loo Choon Hiaw (Transcripts for 6 May 2016 at pp 70–71).

178 Written submissions of Suppiah Dhanabalan.

4.59 Third, in the Commission's view, companies which meet the shareholders' equity threshold of $500 million are more likely than not to be sufficiently large and complex, such that persons who helmed these companies would likely possess the requisite technical skills, experience and expertise in financial matters that would make them suitable candidates for the Presidency. Companies which meet the proposed threshold are apt to have substantial cross-border operations and they would usually transact in significant sums of money. Their leaders would likely have to take into account diverse strategic and operational considerations in making business decisions for the company.

4.60 Fourth, the Commission reiterates that while the selection of the threshold is not a purely quantitative issue and that the criteria should not be manipulated so as to artificially increase (or reduce) the size of the pool of candidates, it also observes that the threshold of $500 million is not so high as to dramatically shrink the pool of potentially qualified persons. Rather, in absolute terms, more companies would meet this revised threshold than those which met the original $100 million paid-up capital threshold just after the latter was first introduced. As explained at paragraphs 4.46–4.47 above, approximately *158* Singapore-incorporated companies met the $100 million paid-up capital criterion in 1993. By contrast, based on data available from the Accounting and Corporate Regulatory Authority ("**ACRA**"), as at March 2016, there were *691* Singapore-incorporated companies with shareholders' equity at or exceeding $500 million,[179] although the actual number is likely to be ***larger*** than this.[180] The percentage of companies which would cross the threshold will also increase slightly. In 1993, approximately 0.2% of all companies met the $100 million paid-up capital threshold; under the proposed $500 million shareholders' equity threshold, approximately 0.23% of all Singapore-incorporated companies would qualify today.[181] Further, there may also be companies which previously would not have met the current

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179 Source: ACRA.

180 Roughly 80% of Singapore-incorporated companies do not file their financial statements with ACRA, particularly the private exempt companies. These companies may also have shareholders' equity exceeding $500 million but, given that ACRA does not have their financial statements, they would not be captured in the figure of 691.

181 As at March 2016.

threshold because their paid-up capital is below $100 million, but which might meet the proposed threshold of $500 million shareholders' equity, particularly if there had been substantial growth in the value of those companies over time.

4.61 The Commission considered whether a further requirement should be added, namely, that the company in question be publicly -listed on the Singapore Exchange.[182] As at March 2016, there were only 94 publicly-listed companies that met or exceeded the proposed $500 million shareholders' equity threshold. On the one hand, publicly-listed companies are undoubtedly subjected to rigorous standards of corporate governance and disclosure, and a President who is used to dealing with such requirements would be well-placed to oversee Singapore's reserves.[183] On the other hand, the Commission is also cognisant of the fact that it is already proposing several measures in this report to update the qualifying criteria for limb (iii) of Article 19(2)(*g*), specifically:

(a) the use of shareholders' equity instead of paid-up capital as a criterion;

(b) changing the quantitative threshold to $500m;

(c) limiting automatic qualification under this limb to the holder of most senior executive position in the company (see paragraphs 4.63–4.65 below);

(d) imposing a performance criterion (see paragraph 4.66 below);

(e) extending the length of the qualifying tenure (see paragraphs 4.72–4.73 below);

(f) enhancing the self-disclosure requirements (see paragraphs 4.80–4.84

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[182] This was suggested by various contributors: written submissions of Dr Loo Choon Yong & Loo Choon Hiaw; Naganatha Pillay. Note that in the First White Paper at ¶18(e) suggested that the criteria be restricted to Chief Executive Officers of *publicly-listed* corporations, but this proposal was ultimately not accepted.

[183] This point was also raised by one pair of contributors: written submissions of Dr Loo Choon Yong & Loo Choon Hiaw.

below); and

(g) imposing a requirement of currency (see paragraph 4.75 below).

The Commission considers that these measures, taken cumulatively, ought to substantially reduce the risk of unqualified persons gaining automatic qualification. Hence, while experience in leading a publicly-listed company would be valuable, the Commission does not consider it necessary to propose this at the present time.

4.62 The Commission further considers that the proposed shareholders' equity threshold should be reviewed periodically, for instance, within 12 months before every alternate Presidential election. The PEC could discharge this responsibility itself (particularly if the Commission's recommendations at paragraphs 4.91–4.94 below to strengthen the PEC are accepted), or it could do so in consultation with a committee of individuals with strong financial expertise, whose assistance the PEC could specifically enlist for this purpose.

Nature of the position within the company: Corporate positions which should qualify

4.63 The Commission considers that limb (iii) of Article 19(2)(*g*) currently places undue emphasis on form rather than substance. As it stands, an individual would qualify so long as he has been the Chairman or CEO of a company that meets the requirements of limb (iii), regardless of the actual nature and scope of his work within that company. This is unsatisfactory given that those who fall within limb (iii) of Article 19(2)(*g*) ought to be persons who have had practical experience in handling fiscal matters of sufficient size or complexity. Some large companies might well have non-executive Chairmen who are not actively involved in running the company and who are consequently unlikely to possess the necessary expertise or experience. This was a criticism raised by several contributors, and it is one with which the Commission agrees.[184]

[184] Written submissions of Dr Gillian Koh & Tan Min-Wei; Suppiah Dhanabalan; Dr Loo Choon Yong & Loo Choon Hiaw; Ong Poh Seng. Oral representations of Edwin Yeo (Transcripts for 18 April 2016 at p 86).

4.64 The Commission proposes that instead of stipulating eligibility by reference to job titles such as "Chairman" and "Chief Executive Officer" in limb (iii) of Article 19(2)(*g*), this should be replaced with a more general requirement that the office in question must be one in which the highest level of executive authority in the company is reposed. The Commission considers that a stipulation such as "the most senior executive position in the company, however that office may be titled" would be more appropriate as it would capture those who might variously be titled as CEOs, Managing Directors or Executive Chairmen but would exclude, for instance, a *non-executive* Chairman who might have been invited to lead the board but who does not in fact actively run the company.

4.65 The requirement for the applicant to have occupied "the *most* senior executive position" within the company would also mean that, in each company, at any given time, there would generally only be *one* individual who holds this position. Some contributors suggested that limb (iii) of Article 19(2)(*g*) be broadened to capture other senior management level positions, such as Chief Financial Officers or Chief Operating Officers.[185] The Commission does not agree with this suggestion. It is the holder of *the most senior executive* position who bears the ultimate weight of responsibility for the fate of the company and should, therefore, by virtue of this, be *deemed* to have the requisite experience and expertise that justifies qualification under the automatic track in limb (iii) of Article 19(2)(*g*).[186]

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[185] Written submissions of Grace Teo Pei Rong, Carina Kam Zhi Qi, Amelia Chew Sihui & Russell Wong Yung; Edmund Lin; Naganatha Pillay; Tan Wui-Hua. Oral representations of Ranvir Kumar Singh (Transcripts for 22 April 2016 at p 80). By way of background, for the 2005 Presidential elections, Mr Andrew Kuan, the former Group Chief Financial Officer of the Jurong Town Corporation, was assessed as not qualifying for the CoE. The PEC had adjudged that the seniority and responsibility he held was not comparable to that which might be possessed by a person who qualified under limb (iii) of Art 19(2)(*g*).

[186] Nevertheless, the Commission would again note that other senior management level officers are not precluded from seeking to persuade the PEC of their eligibility under the deliberative track provided for in limb (iv) of Article 19(2)(*g*): see paragraph 4.22 above. The point made here is that they should not be *automatically* deemed to be qualified for Presidential office.

Performance criteria

4.66 At present, an applicant who has held the position of Chairman or CEO in a company that meets the requirements of limb (iii) for the requisite period of time is deemed eligible to run for the office of President under limb (iii) of Article 19(2)(*g*). However, some contributors suggested that limb (iii) be supplemented by the addition of a performance criterion.[187] The Commission agrees. Given that the object of the eligibility criteria is to ensure, to the greatest extent possible, that those who qualify are in fact capable of undertaking the tasks entrusted to the President, the Commission considers that it would be desirable to require that those who seek qualification under limb (iii) demonstrate that the companies under their charge displayed an acceptable level of performance during the time they held office. Specifically, the Commission proposes imposing a profitability requirement. This could be given effect by mandating, for instance, that the company in question:

(a) must have had a record of *net* profitability during the entire period that the applicant held the qualifying office (in other words, the profits generated during this period should exceed any losses incurred); *and*

(b) that it must *not* have gone into liquidation or entered into any other type of insolvency process (such as judicial management) within a period of three years of the applicant ceasing to be the holder of the qualifying office, or by Nomination Day for the Presidential election in question, whichever is the earlier.

4.67 The Commission recognises that this may be a blunt measure of the company's performance. Indeed, there might be other quantitative performance measures that might be equally or even more suitable. However, the Commission's broad point is that as a matter of principle, an additional *performance* criterion is warranted for those who seek to justify their candidacy under limb (iii) of Article 19(2)(*g*).[188]

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[187] Written submissions of Dr Gillian Koh & Tan Min-Wei; Ranvir Kumar Singh.

[188] Should an applicant fail to qualify on the ground of his company failing to meet this

The deliberative track: Limb (iv) of Article 19(2)(*g*)

4.68 Under limb (iv) of Article 19(2)(*g*) of the Constitution, individuals who have not held any of the qualifying offices from either the private or public sectors prescribed in limbs (i) to (iii) of Article 19(2)(*g*) may nevertheless seek to persuade the PEC that they have held a comparable office and hence possess the requisite experience and expertise to be President.

4.69 The Commission does not think it is prudent to fetter the PEC's discretion by setting out an exhaustive list of factors that the PEC should consider (save one pertaining to performance that we explain at paragraph 4.70 immediately below). The Commission considers that it is sufficient to note that the PEC should take a holistic view of the applicant's experience and expertise and assess whether he is likely to be qualified to hold the office of President. However, the Commission notes that as limb (iv) of Article 19(2)(*g*) is currently drafted, the PEC is obliged, when assessing applicants under the deliberative track, to specifically consider their suitability by reference to whether that candidate has experience and ability "in administering and managing *financial affairs*" [emphasis added]. The explicit reference to expertise in financial affairs would seem to favour applicants from the private sector rather than from the public sector, and could conceivably exclude those who have held public-sector positions of considerable seniority but who did not qualify under limb (i) of Article 19(2)(*g*). Such persons might have had extensive experience in public policy but lack similar involvement in financial matters. It is not clear to the Commission if this was the policy intent, or if it was an unintended consequence of legislative drafting. The Select Committee did not appear to have intended that such public-sector candidates be excluded:[189]

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proposed profitability requirement, it remains possible for him to apply under limb (iv) of Article 19(2)(*g*), where his performance and that of his company could be explained to the PEC in greater detail. In such a situation, it would be open to the PEC to conduct a qualitative appraisal based on a broader range of factors (beyond profitability) to assess whether the entity's performance impacts the applicant's eligibility to contest the Presidential election.

[189] 1990 Select Committee Report at ¶14(b).

> (b) … Of all the safeguard roles envisaged for the President, the most important is clearly that of protecting the reserves. The criteria should therefore focus on a candidate's ability, experience and integrity in administering the financial affairs of an organisation or department equivalent in size or complexity … The Committee proposes to add … a general category of people who have "held office for not less than 3 years:":
>
> > " ... in any other similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector which in the opinion of the Presidential Elections Committee has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of the President."
>
> …
> (h) … The Committee received various suggestions to include Ambassadors, Professors, the Solicitor-General, etc. in the list. However, it decided not to broaden the categories of people who are considered qualified *per se*, as the additional posts suggested did not meet the basic criterion of having the experience and ability of managing funds in a large organisation.
>
> **This does not mean that former Ambassadors, Professors, Vice-Chancellors or others are excluded. They can still be considered by the PEC pursuant to the new provision recommended in (b) above,** and will be eligible if they have the requisite experience and ability.
>
> [emphasis added]

The Commission highlights this as a matter that ought to be clarified.

4.70 Aside from this, the Commission proposes that limb (iv) of Article 19(2)(*g*) be amended to explicitly *require* the PEC to take performance indicators of the entity in question into consideration when exercising its discretion whether to certify the eligibility of an applicant to contest in a Presidential election. Specifically, the PEC should have the ability to deny an applicant a CoE if it is satisfied that he had performed poorly in the office he held.

4.71 By way of illustration, the Commission proposes that any incidents which had a significant adverse impact on the reputation of the company while the applicant held the position he is relying on, and which implicate the applicant or his performance in the office (such as matters involving fraud or serious regulatory breaches), may be

taken into account by the PEC.[190] For applicants from the public sector, any serious audit issues faced by the organisation, which implicate the applicant or his performance in the office, should also be examined and assessed by the PEC. Likewise, applicants who seek discretionary admission under limb (iv) because they were the holders of a private-sector qualifying office in a company which did not meet the profitability criterion recommended for limb (iii) of Article 19(2)(*g*) (at paragraph 4.66 above) will have their performance scrutinised by the PEC.

Length and currency of the applicant's qualifying tenure

4.72 Article 19(2)(*g*) currently requires applicants to have held a qualifying office for at least 3 years. Some contributors opined that this duration was too short and should be lengthened.[191] The Commission agrees and is of the view that applicants should be required to have spent a longer period of time in a qualifying office for several reasons. First, it takes time to acquire and hone the requisite skills. Second, the length of time one spends in an office can be an indirect indication of that person's success in discharging the responsibilities of that office. This was a point adverted to at paragraph 4.34 above.

4.73 Therefore, the Commission proposes that all applicants under limbs (i) to (iii) of Article 19(2)(g) must have held the relevant qualifying offices for a period of at least 6 years.[192] For applicants applying under limb (iv), while the tenure served within the qualifying office should be of a comparable duration, the Commission proposes that the requisite number of years need not be expressly stipulated in the Constitution, to accord the PEC greater flexibility in its deliberations. The Commission would nevertheless add that while the 6-year requirement may not strictly apply, the PEC ought to assess the applicant's performance over a sustained period of time, to determine whether the

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[190] Private-sector officeholders who fail to qualify under Article 19(2)(*g*)(iii) due to an inability to meet the proposed profitability criteria at paragraph 4.66 above may also seek entry under limb (iv) of Article 19(2)(*g*) instead, under which the relevant entity's performance will be subject to a more fact-specific assessment.

[191] Written submissions of Assoc Prof Eugene Tan; Dr Gillian Koh & Tan Min-Wei.

[192] But note the observation at paragraph 4.69 above, that the policy intent of Article 19(2)(*g*)(iv) in relation to officers in the public sector ought to be clarified.

applicant's tenure in the office concerned has in fact conferred the requisite experience and expertise comparable to that which would have been gained from a 6-year stint in any of the qualifying offices under the automatic track.

4.74 The Commission also considers that an applicant's tenure at two or more different organisations may be aggregated for the purposes of deciding whether he satisfies the requisite length of tenure.[193] However, the Commission considers that the time that an individual spends in a *private-sector* qualifying office should not be aggregated with that spent in a *public-sector* qualifying office. This is because the experience derived from one route is likely to be different in nature from that derived from the other. Each route should therefore be regarded as separate and applicants should be required to satisfy the prescribed length of time in a particular route, without adding time spent in the other route, in order to meet the criteria. To illustrate the point, an individual who spends 3 years as the most senior executive officer of one company and another 3 years as the most senior executive officer of another company, where both companies meet the requirements of limb (iii), will satisfy the requirement as to tenure. Similarly, a person who spends 3 years as a Permanent Secretary and 3 years as a Minister will satisfy the requirement as to tenure. However, a person who spends 3 years as the most senior executive officer of a Fifth Schedule statutory board and 3 years as the most senior executive officer of a company that meets the requirements of limb (iii) will *not* be treated as having met the requirement as to tenure.[194]

4.75 The Commission also received suggestions for a requirement that the applicant's leadership experience be relatively current.[195] The Commission accepts this

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[193] This means that candidates who move from one qualifying office to another within short spans of time may still meet the requisite tenure, through aggregation of the separate terms. This might appear to be at odds with the point that the Commission made at paragraph 4.34 above, about using the tenure requirement to filter out those who were either removed or not re-appointed to an office because of sub-par performance. However, as explained at paragraph 4.87 below, applicants who successfully obtain a CoE will have to disclose their application form to the public. The electorate will then be able to examine the form for *negative* performance indicators, which have to be disclosed: see paragraph 4.83 below.

[194] However, such a candidate could apply to the PEC under limb (iv) of Article 19(2)(*g*).

[195] Written submissions of Dr Gillian Koh & Tan Min-Wei, suggesting a "look-back period" of 10 years.

suggestion as the applicant's experience, if acquired some time ago, may no longer be relevant given the rapidly evolving environment in which he will have to function. The Commission therefore proposes that the entire period of the applicant's qualifying tenure should fall within the period of 15 years immediately preceding Nomination Day for the Presidential election in question. The Commission proposes that this requirement should apply in respect of all qualifying offices, whether under the automatic track in limbs (i) to (iii) or under the deliberative track in limb (iv) of Article 19(2)(*g*).

Candidates' political affiliations

4.76 Currently, in order to qualify to contest in Presidential elections, an applicant must not be a member of any political party on the date of his nomination for election. Some contributors queried whether this sufficiently guarantees that the President is independent of the Government. Some suggested that a Presidential candidate should not have been affiliated to any political party for a defined number of years prior to his nomination[196] or at all.[197]

4.77 The Commission respectfully considers that these submissions appear to ignore practical realities. Many persons who are qualified to contest in Presidential elections and who are willing to serve the public in that capacity may have had prior links with one political party or another. Moreover, the electorate will likely form a judgment on the independence of any candidate, and can choose not to elect him if they are not convinced of his independence from the political party in power. The Commission therefore considers that the existing requirements, which provide that any political affiliations must be relinquished prior to nomination and cannot be renewed during the tenure of the Presidency, are sufficient.[198]

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196 Written submissions of Chee Kok Kheong (suggesting a hiatus of 10 years); Chong Ja Ian (suggesting a hiatus of 5 years); Ang Seng Chuan (suggesting a hiatus of 3 years); Tay Kheng Soon; Chua Jia Ying, Trinisha Ann Sunil, Rachel Koh Hui Fang & Manfred Lum Rui Loong.

197 Written submissions of Lee Chin Wee.

198 Articles 19(2)(*f*) and 19(3)(*c*) of the Constitution.

The requirement of integrity, good character and reputation

4.78 Article 19(2)(*e*) of the Constitution requires the PEC to assess the applicant's integrity and character. One contributor suggested that the PEC should not be tasked with this responsibility, given the inherently subjective nature of the assessment.[199] Reasonable persons might disagree on whether certain types of behaviour should warrant disqualification. Another contributor suggested the removal of Article 19(2)(*e*) in its entirety.[200] Both contributors explained that whether a candidate possesses the requisite integrity and character was a question best left to the electorate.[201]

4.79 The Commission considers that the requirement that an applicant possess "integrity, good character and reputation" is critical and its removal would send the wrong signal. It would also be incongruous if the President, who is tasked with safeguarding the integrity of the Public Service, were not himself subject to any criteria touching on integrity. The Commission also considers that the PEC should continue to be tasked with assessing whether an applicant satisfies this requirement. Allowing the PEC to undertake this responsibility could potentially reduce the instances of hurtful attacks on character during the election process. Such divisiveness would detract from the dignity of the office of President and possibly undermine the eventual victor's ability to discharge the President's ceremonial, symbolic and unifying roles effectively. The Commission therefore considers that this is best left as a core function and responsibility of the PEC.

4.80 However to facilitate the PEC's assessment, applicants should be required to complete and submit a self-disclosure form, made under oath or affirmation, to the PEC. This would give the PEC sufficient information to assess whether the applicant satisfies this requirement under Article 19(2)(*e*). For example, the applicant could be asked to disclose whether he:

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199 Written submissions of Assoc Prof Eugene Tan.
200 Written submissions of AWARE.
201 Written submissions of AWARE; Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at pp 29–30).

(a) has a criminal record;

(b) has ever been the subject of any professional or regulatory disciplinary proceedings;

(c) has ever been declared bankrupt;

(d) has ever been the subject of legal proceedings of any sort; and

(e) has ever been the subject of any injunction-type measures (including, for instance, a protection order under s 65 of the Women's Charter[202]).

Requiring CoE applicants to provide greater disclosure

4.81 The Commission notes that applicants for a CoE are currently required to complete and submit a form to the PEC. This form, which is found in the Schedule to the Presidential Elections (Certificate of Eligibility) Regulations, [203] contains declarations that are made pursuant to the Oaths and Declarations Act.[204]

4.82 The Commission considers that applicants should be required to provide a greater amount of information to the PEC than is presently required. This would assist the PEC in its assessment of the enhanced eligibility criteria that have been proposed in this report. The enhanced form should mandate disclosures of matters pertaining to both the requirements of character and integrity, as well as to any other question of eligibility that the PEC may have to consider or decide upon. For example, in respect of the private-sector qualifying office requirements in limb (iii) of Article 19(2)(*g*), the applicant could be asked to describe the nature of their office and elaborate on the specific roles they played and the responsibilities they held during that time, in order to enable the PEC to determine whether the position held by the candidate is in fact the most senior executive position within the company.

4.83 All applicants would also be required to provide a reasonably detailed qualitative description of the work done, experience gained and any accomplishments

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202 Women's Charter (Cap 353, 2009 Rev Ed).

203 Presidential Elections (Certificate of Eligibility) Regulations (Cap 240A, Rg 2, 2000 Rev Ed).

204 Oaths and Declarations Act (Cap 211, 2001 Rev Ed)).

during their tenure in the qualifying office, as well as potential *negative* performance indicators. The form could also include other relevant information, such as the applicant's involvement in community activities or initiatives which would demonstrate his engagement with ethnic groups other than his own.[205]

4.84 A sample of an application form incorporating some of these suggested revisions can be found at **Annex D**.

4.85 The PEC should further be empowered (by way of an amendment to the Presidential Elections Act) to seek further information from applicants, who should be required to respond to any such request by way of a statutory declaration made under the Oaths and Declarations Act.

4.86 The Commission also proposes that the Presidential Elections Act be amended to empower the PEC to revoke the CoE if the applicant is *at any time* found to have made any material false declarations in the CoE application form. Conceivably, this could even take place after the candidate has successfully contested the elections and assumed office. In such circumstances the office of President would have to be vacated. If this is accepted, then to safeguard the President from potential abuse, any such determination by the PEC directed at an incumbent President should be open to challenge by the President before a Constitutional Tribunal. To this end, the remit of the Constitutional Tribunal convened under Article 100 of Constitution could be expanded to include this function.[206]

4.87 Lastly, for applicants who have been successful in securing a CoE, the declarations in the application form, as well as any further declarations provided to the PEC pursuant to the proposal at paragraphs 4.82–4.85 above, should be made public.

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[205] One of the contributors highlighted the challenges of capturing the applicant's "multiracial sensibility" and alluded to applicants having a track record of working for the benefit and well-being of not just one community, but of the national community: oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at p 7).

[206] Article 100(1) of the Constitution provides that "The President may refer to a tribunal consisting of not less than 3 Judges of the Supreme Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise."

Such disclosure can be made by the PEC. One contributor observed that such disclosure would have a salutary effect on the conduct of applicants who might otherwise be tempted to exaggerate their credentials.[207] The Commission agrees with this observation. The Commission also considers that there is no reason to deny the electorate access to such information. However, given that publication of the declarations of a candidate who has failed to secure a CoE may aggravate the embarrassment arising from his rejection, declarations of *unsuccessful* applicants should *not* be disclosed to the public (although it would be open to the unsuccessful applicant to disclose it if he wished to do so). This will reduce the prospect of potential applicants being dissuaded from stepping forward to contest the elections. It may also encourage applicants to be more forthcoming in making the relevant disclosures in their declarations.

Strengthening the PEC

4.88 The PEC is established under Article 18 of the Constitution. As noted at paragraph 4.5 above, it is a body with a very specific role in the context of Presidential elections, namely, to assess applicants for a CoE in two respects:

(a) for all applicants, whether they satisfy the requirement of "integrity, good character and reputation" in Article 19(2)(*e*); and

(b) for applicants applying under limb (iv) of Article 19(2)(*g*), whether the requirements in that provision have been satisfied.

4.89 Moreover under the proposals contained in this report, the PEC would have the following additional responsibilities:

(a) in relation to applicants seeking eligibility under limbs (ii) and (iii) of Article 19(2)(*g*), to assess whether the applicant did in fact hold the most senior executive position in the entity in question;

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[207] Oral representations of Suppiah Dhanabalan (Transcripts for 6 May 2016 at p 11).

(b) in relation to applicants applying under limb (iii) of Article 19(2)(*g*), to assess whether the performance criterion has been met by the company in question; and

(c) in relation to applicants applying under limb (iv) of Article 19(2)(*g*), to take the relevant performance indicators into account.

4.90 The PEC currently comprises 3 members: the Chairman, PSC (who chairs the PEC), the Chairman of the ACRA, and a member of the PCMR nominated by the Chairman of the PCMR to sit on the PEC.[208]

4.91 Given the latitude for judgment that the PEC exercises on the issues at paragraphs 4.89(a) and 4.89(c) above and the enhanced role of the PEC contemplated by the proposals set out in this report, the Commission proposes that the membership of the PEC be enhanced.[209] This will ensure that the PEC is better placed to discharge its functions.

4.92 In this respect, the Commission proposes that the following additional members be nominated to sit on the PEC:

(a) A retired judge of the Supreme Court or other legal expert nominated by the Chief Justice. Since the PEC would have to engage in some degree of constitutional interpretation when deciding whether the requirements stipulated in any part of Article 19(2)(*g*) have been satisfied, the PEC would benefit from having a legal expert within its ranks. Additionally, the legal expert would be able to ensure that the decision is reached in a manner that is procedurally fair. This is especially important since the PEC's decisions on whether a candidate has satisfied the eligibility criteria are stated to be final and not subject to appeal or review in any

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[208] Article 18(2) of the Constitution.

[209] One contributor felt that the PEC was small and favoured expanding the PEC to enhance its size and experience: oral representations of Suppiah Dhanabalan (Transcripts for 6 May 2016 at p 8).

court.[210]

(b) A current or past member of the CPA nominated by the Chairman of the CPA. Having been on the body that advises the President on the exercise of the latter's critical custodial powers, a member of the CPA would have a unique insight into what the President's job entails. Those insights could be highly pertinent to the assessment of whether applicants meet the eligibility criteria for Presidential office. [211]

(c) A nominee from the private sector nominated by the Prime Minister. Where private-sector applicants seek to qualify under the deliberative track in limb (iv) of Article 19(2)(*g*), the private-sector nominee on the PEC would be able to provide valuable perspectives on whether the applicant's company is of a size and complexity comparable to companies that meet the requirements of limb (iii) of Article 19(2)(*g*). Additionally, the nominee would be well-placed to assess if the applicant's position within his company is such as to indicate that he has the experience and expertise that the President should possess.[212]

4.93 With these additions, the PEC would have 6 members. Currently, the PEC may regulate its own procedure and fix the quorum for its meetings.[213] The Commission proposes that there be explicit legislative amendments allowing the (expanded) PEC to decide on issues by a simple majority, with the Chairman of the PEC exercising a casting vote in the event of a tie, as is presently the case for decisions made by the CPA.[214]

4.94 The Commission also proposes that changes be enacted in relation to the timing

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[210] Article 18(9) of the Constitution.
[211] One contributor suggested that a member of the CPA sit on the PEC: written submissions of Robert Tan Chian Sian.
[212] The same contributor suggested that the PEC include someone working in the private-sector with the business experience to enable him to assess the financial capabilities of a private-sector candidate: written submissions of Robert Tan Chian Sian.
[213] Article 18(6) of the Constitution.
[214] Article 33J(2B) of the Constitution.

at which applicants may apply for a CoE, to ensure that the PEC has adequate opportunity to undertake the necessary checks and arrive at a determination of those eligible to contest the elections.[215]

Enhancing the accountability for PEC decisions

4.95 Currently, the PEC's decisions on whether a candidate meets the requirements set out in Articles 19(2)(*e*) and 19(2)(*g*)(iv) are "final and not … subject to appeal or review in any court".[216] Some contributors suggested that it should be possible to seek judicial review of or to appeal to the court against the merits of the PEC's decisions on these issues.[217]

4.96 The Commission does not agree with this for a number of reasons. An appeal against the PEC's decisions on the merits is apt to entail the Judiciary being asked to make decisions which are, in substance, political. The Commission finds this to be an undesirable derogation from the principle of the separation of powers under the Constitution. One contributor who had canvassed the benefits of enabling the Judiciary to undertake a merits review of the PEC's decisions ultimately accepted the difficulty with this but maintained that there should at least be review of the legality of the PEC's decision (*ie*, judicial review on the process the PEC adopted in reaching its decision).[218] The Commission considered this carefully. However, the Commission notes that the PEC is the institution which is uniquely qualified to decide whether the requirements set out in Article 19(2) are met. Propriety of legal process can be secured by the presence of a legal expert nominated by the Chief Justice, as proposed at paragraph 4.92(a) above. This would be more efficient and expeditious than having the matter go

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[215] At present an application for a CoE must be made not later than 3 days after the date of the writ for a Presidential election is issued: section 8(1) of the Presidential Elections Act (Cap 240A, 2011 Rev Ed).

[216] Article 18(9) of the Constitution.

[217] Written submissions of Asst Prof Jack Lee; Grace Teo Pei Rong, Carina Kam Zhi Qi, Amelia Chew Sihui & Russell Wong Yung; Benedict Chan Wei Qi. Oral representations of Asst Prof Jack Lee (Transcripts for 26 April 2016 at pp 121–122).

[218] Oral representations of Asst Prof Jack Lee (Transcripts for 26 April 2016 at pp 121–124).

through the court process.[219] The Commission also considers that it would not be desirable to encourage collateral litigation connected with the office of President. The only qualification to this proposal is that if the PEC makes a decision revoking the CoE of an incumbent President on the ground that his application contained a material misrepresentation, this decision of the PEC should be subject to challenge on the merits by the incumbent President before a Constitutional Tribunal, as set out at paragraph 4.86 above.

4.97 Some contributors also suggested that the PEC should give reasons when it rejects applications for CoEs and that these reasons should be made public.[220] The Commission agrees that it would be desirable for the PEC to give reasons when it *rejects* applications for CoEs. This will provide a measure of transparency and accountability to the process. However, the Commission does not think that the PEC should publicise its reasons for rejecting an application, because that could discourage persons from stepping forward to run for office, for fear of the embarrassment of being rejected in their application for a CoE and then having the reasons for the rejection made public. A more measured solution would be to require the PEC to furnish to the unsuccessful applicant its reasons for denying the CoE, and to leave the applicant to decide for himself whether he wishes to make those reasons public.[221] Some contributors who initially contended that the PEC should publicise its reasons for refusing to grant a CoE subsequently accepted that this solution adequately served the objectives of fairness, transparency and accountability.[222]

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219 The Commission also notes that practically, persons who are aggrieved with the PEC's decision may find it difficult to initiate a court challenge because of the tight timeframes governing the elections.

220 Written submissions of Assoc Prof Eugene Tan; Chua Jia Ying, Trinisha Ann Sunil, Rachel Koh Hui Fang & Manfred Lum Rui Loong; Benedict Chan Wei Qi. Oral representations of Asst Prof Jack Lee (Transcripts for 26 April 2016 at p 119).

221 Some contributors were in favour of this proposal: oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at p 32).

222 Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at pp 33–34); Asst Prof Jack Lee (Transcripts for 26 April 2016 at p 119).

CHAPTER 5

THE SECOND ASPECT: ELECTION OF MINORITIES TO THE OFFICE OF PRESIDENT

5.1 The second aspect of the Commission's Terms of Reference relates to how minority representation in the Presidency may be safeguarded. Prime Minister Lee observed in his speech in Parliament on 27 January 2016 that it was "important that minorities have a chance to be elected President, and that this happens regularly".[223]

The rationale for ensuring minority representation in the Presidency

5.2 It is necessary for the Commission to first examine whether there is a legitimate basis for having safeguards to ensure minority representation in the Presidential office.

5.3 The importance of encouraging minority representation in the office has on occasion been overlooked because much of the recent discourse surrounding the office of President has tended to emphasise the President's custodial and protective functions, and the attendant legitimacy which the President requires if he is to stand in the way of an intended action of the Government. For this reason, public attention has been focused on the technocratic aspects of the Presidential function, and the need to identify candidates who have the considerable skill, experience and expertise needed to make such decisions. A person's race would be irrelevant to the exercise of these powers and functions.

5.4 The Commission considers that it is necessary to refocus the understanding of the office of President on an equally important aspect which might have been overlooked, namely, the President's ceremonial and symbolic function as the Head of State. That function was a hallmark of the office at its inception, when Singapore achieved self-government. As mentioned at paragraph 2.7 above, an examination of the

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[223] *Singapore Parliamentary Debates, Official Report* (27 January 2016) vol 94 (Lee Hsien Loong, Prime Minister).

role played by the Monarch of the United Kingdom is relevant to former British colonies such as Singapore, given that the Heads of State of many of these former colonies were to discharge functions performed by the Monarch under the Westminster system.[224] British constitutional expert Professor Vernon Bogdanor described the role of the Monarch as follows:[225]

> The functions of a head of state, where that office is separated, are generally of three main kinds. First, there are constitutional functions, primarily formal or residual, such as appointing a Prime Minister and dissolving the legislature. Second, there are various ceremonial duties. **Third, and perhaps most important, is the symbolic function, by means of which the head of state represents and symbolises not just the state but the nation. It is this last role that is the crucial one**... [emphasis added]

5.5 This function continues to be integral to the President's office today. The Commission considers that it is *because* of the crucial symbolic role performed by the President that the office should periodically be held by persons from minority races. The Commission considers it vital that ethnic minorities must neither be perceived nor must they perceive themselves as being unable to access the highest office in the land. The President symbolises and embodies the nation itself. The importance of rotating such a symbolic office among the major ethnic groups in Singapore was also noted by then Senior Minister Lee Kuan Yew, who said in an interview with the *Straits Times* in 1999 that the "convention of rotating the Presidency among the races was important to remind Singaporeans that their country was multi-racial".[226] Mr Lee Kuan Yew went on to observe that after having had two Presidents in a row from the Chinese community (namely, Mr Wee Kim Wee and the first elected President, Mr Ong Teng Cheong), it was vital that the next President of Singapore be a member of a minority race: "[i]t's time to remind Singaporeans, to have a symbol of a multi-racial community, an expression of our national identity".[226]

5.6 The changes wrought by the introduction of the Elected Presidency introduced

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[224] *A Treatise on Singapore Constitutional Law* at ¶9.006.

[225] Vernon Bogdanor, "The Monarchy and the Constitution", *Parliamentary Affairs* (1996) 49(3) 407–422 ("*The Monarchy and the Constitution*") at pp 410–411.

[226] Zuraidah Ibrahim and Irene Ng, "Good to rotate EP among races", *The Straits Times* (11 August 1999) at p 27.

an *additional* custodial dimension to the President's office, but the Commission stresses, once again, that this did not change the critical importance of the symbolic role of the President. Placing undue focus on the custodial role, to the exclusion of the symbolic, would oversimplify what is in truth a multi-faceted institution, even as it has grown and evolved since Singapore's independence.

5.7 Several contributors were of the view that a safeguard to *ensure* representation of minority races in the Presidency should not be introduced. This view was based largely on three arguments. First, it was suggested that the introduction of such a safeguard would reinforce racial differences rather than foster multiculturalism.[227] It was argued that the emphasis should instead be on achieving a race-blind society, where the choices of the electorate are not shaped by the colour of a candidate's skin.[228] Second, any such safeguard would undermine the principle of meritocracy, which is a core principle of governance in Singapore. Some argued that it might result in the President being elected not on the strength of his abilities or his suitability for office, but by virtue of his membership of a particular racial group.[229] Third, if such safeguards were introduced for the Presidency, this would lead the country down a slippery slope and it would invite calls for the implementation of similar safeguards to ensure minority representation in other public offices.[230]

5.8 On the other hand, there were contributors who argued in favour of introducing safeguards to ensure minority representation, arguing that it was not only desirable but necessary.[231] These contributors stressed that the President's symbolic and ceremonial functions required that successive officeholders should reflect and represent the multicultural constitution of Singapore. They contended that while Singapore might have made tremendous progress towards a race-blind society, she had yet to reach the stage where it could be said that the race of a candidate did not affect his chance of

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227 Written submissions of Dr Kevin Tan; Pearl Tan; Rabin Kok.
228 Written submissions of Assoc Prof Eugene Tan.
229 Written submissions of Assoc Prof Eugene Tan; Dr Gillian Koh & Tan Min-Wei; Grace Teo Pei Rong, Carina Kam Zhi Qi, Amelia Chew Sihui & Russell Wong Yung.
230 Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 40).
231 Written submissions of Dr Mathew Mathews; Dr Jaclyn Neo & Asst Prof Swati Jhaveri; Suppiah Dhanabalan.

being elected into public office. It was further submitted that in a national election for the Presidency, the cards were stacked against candidates from racial minority groups because the majority of the votes were cast by voters from the largest racial group. If, as a consequence of this, a particular racial group was consistently not represented or severely under-represented, it might lead to the perception that members of that group have deliberately been excluded from the highest office in the land.

5.9 The Commission accepts, as many contributors have emphasised, that the ultimate destination for our society should be a race-blind community where no safeguards are required to ensure that candidates from different ethnic groups are periodically elected into Presidential office. Equally, it seems to be common ground that Singapore as a society cannot affirmatively say that she has already "arrived". The question, then, is whether it would be prudent for safeguards to be put in place to ensure minority representation in the office, even as Singapore continues on the journey towards that destination. The Commission is of the view that it would be, especially since it is uncertain how long the journey will take.

5.10 The Commission is fortified in its view by the empirical data provided by several contributors. Even those *opposed* to the introduction of any safeguard mechanisms to assure minority representation did not go so far as to suggest that the race of a candidate was wholly irrelevant to the electorate's voting behaviour. One pair of contributors, who made an impassioned plea against the imposition of any mechanism directed at ensuring minority representation, cited a survey conducted by the Institute of Policy Studies ("**IPS**") after the Presidential election in 2011.[232] One of the survey questions elicited from respondents their reaction to the statement, "I believe a person of an ethnic minority group can be elected as president through the current system." The contributors stressed that 85% of Chinese respondents, 87% of Malay respondents, 89% of Indian respondents and 75% of respondents from other racial groups said that they either agreed or agreed strongly with that statement. The Commission notes that while this may be an extremely encouraging result, the obverse

[232] Written submissions of Dr Gillian Koh & Tan Min-Wei.

is that a substantial proportion of respondents – between *11 and 25%* of each community – either disagreed, disagreed strongly or failed to voice agreement with that statement. The real figure could conceivably be higher if one corrects for "social desirability bias", which describes the reluctance of survey respondents to express a view that might cast themselves in a negative light. In any case, a margin, even of 11%, is very substantial and will often be sufficient to decisively swing an election in a moderately close contest between candidates from different racial groups.

5.11 Another contributor who came out strongly in support of minority representation safeguards argued that "[a]t least a portion of Singaporeans hold preferences along racial lines, especially for leadership positions".[233] This contributor relied on a 2013 IPS Survey on Race, Religion and Language and a 2007 report published by the S Rajaratnam School of International Studies.[234] The contributor highlighted that the former survey indicated that approximately 18% of the Chinese respondents were not comfortable with a Malay or Indian individual as their *employer*; in contrast, only 7% said they would be uncomfortable with having a Malay or Indian *colleague*. As for the 2007 report, the authors concluded that "in the political sphere, the Indians were consistently preferred over the Malays for all the three political leadership roles of Member of Parliament, Prime Minister and President". The contributor further argued that social psychological research had shown that, if asked to choose between equally qualified candidates from majority and minority races, "a portion of voters will feel a greater affinity to someone who is racially similar to themselves".

5.12 The Commission notes that some contributors have cited the performance of ethnic minority candidates in Singapore's Parliamentary elections to demonstrate that safeguards to ensure minority representation are unnecessary.[235] The Commission

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233 Written submissions of Dr Mathew Mathews.

234 Yolanda Chin, Norman Vasu, *The Ties that Bind & Blind: A Report on Inter-racial and Inter-religious Relations in Singapore* (2 November 2007) <https://www.rsis.edu.sg/wp-content/uploads/2014/07/PB071102_The_Ties_that_Bind_and_Blind.pdf> (accessed 8 August 2016).

235 Written submissions of Assoc Prof Eugene Tan; Wesley Chioh; Ravi Chandran Philemon.

considers that one should be cautious in drawing comparisons between Presidential elections and Parliamentary elections. As pointed out by one contributor, in Parliamentary elections, the political party of a candidate from a minority race and the agenda it stands for might be able to "mitigate the effect of race". Such mitigating effects would be absent in a Presidential election. In fact, for the latter, the candidates are meant to be non-partisan and stand on their individual merit.[236] Even the contributors who cited examples of minority candidates securing decisive victories in single-seat wards to argue strongly against safeguards to ensure minority representation subsequently recognised that a Parliamentary election is chiefly a contest among political parties and is therefore "not analogous" to a Presidential election.[237]

5.13 The Commission also does not accept the argument that the introduction of safeguards to ensure minority representation would undermine meritocracy. First, the argument loses much of its force if any safeguard to assure minority representation does not compromise the eligibility criteria for candidates (the Commission firmly believes that the eligibility criteria should not be compromised: see paragraphs 5.17(c) and 5.41 below). The qualifying criteria are there to ensure only candidates who are likely to have the requisite attributes may run for office. So long as these criteria remain sufficiently stringent, they will continue to serve their critical function of allowing only persons with the necessary experience and expertise for the job to qualify for the office of President. This in turn leads to the second point, which is that the most meritorious candidate may not always be the most electable; this is especially so in the light of the earlier discussion which suggests that race – a factor which ideally should not impede or encourage a voter to vote for a particular candidate – has an impact on at least a portion of the electorate.

5.14 Turning to the third of the arguments that have been noted at paragraph 5.7 above, one contributor expressed the concern that introducing a safeguard to ensure minority representation in the Presidency may set Singapore down a slippery slope

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236 Written submissions of Dr Mathew Mathews.

237 Written submissions of Dr Gillian Koh & Tan Min-Wei and their subsequent clarification note dated 19 April 2016.

towards the recognition of "group rights".[238] Some contributors queried whether instituting safeguards to ensure the election of minorities to the office of President could lead to calls for similar safeguards to be instituted for other offices, such as that of the Prime Minister or Chief Justice,[238] or the Speaker of Parliament.[239] While the Commission acknowledges that the notion of group rights is inconsistent with our constitutional framework, this objection fails to recognise the unique symbolic function that the President plays. No other public office – not that of the Prime Minister, the Chief Justice or the Speaker of Parliament – is intended to be a personification of the State and a symbol of the nation's unity in the way that the Presidency is. There is therefore a critical distinction in principle between the Presidency and other public offices which justifies measures being taken to ensure minority representation for the former but not for the latter.

5.15 The Commission agrees emphatically that a race-blind society is the only legitimate aspiration for Singapore; but there is a pressing need to ensure that no ethnic group is shut out of the Presidency even as progress is made towards that ideal, lest the office of President lose its vitality as a symbol of the nation's unity. Singapore cannot yet be considered a post-racial society: this is a reality that must be faced, even if it is one that is not to be endorsed. Even one of the contributors who strongly disagreed with the introduction of any safeguards to ensure minority representation accepted that it was "worrying" that Singapore has not had a Malay President in two generations, since Encik Yusof bin Ishak passed away in office 46 years ago.[240]

5.16 The Commission therefore considers that there are strong justifications for introducing some safeguards to ensure that the highest office in the land is not only accessible, but *is seen to be accessible*, to persons from all the major racial communities in Singapore.

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238 Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 40).
239 Oral representations of Brian Chang (Transcripts for 18 April 2016 at p 63).
240 Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 37).

Possible models

5.17 In considering what might be the best method for achieving this, the Commission was guided by the following key principles:

a) It would be desirable to choose a course that involves the *minimum* degree of intervention; nothing more should be done than is necessary to achieve the aim of ensuring that *all* racial groups are represented in the Presidency.

b) It would be desirable that any measure which is devised incorporates an in-built mechanism that allows it to recede in significance over time to a point where it ceases to apply altogether when it is no longer needed.

c) Any mechanism to encourage minority representation should not, under any circumstances, compromise the eligibility criteria that candidates must satisfy, given the President's exacting custodial responsibilities and the profound impact that his decisions could have on the country.

5.18 The Commission considered various proposals put forward by the contributors. These proposals, which will be discussed in greater detail below, can be classified into several broad categories: group-representation models, pre-assigned cycles, hiatus-triggered safeguards, hybrid models as well as other models. Each of these is discussed in turn.

Group-representation models

5.19 The models falling within this category each proposed that teams comprising members of different ethnicities run for Presidential office on the same ticket. A number of contributors drew inspiration from the group representation constituency model used in Singapore's Parliamentary elections when advancing proposals falling in this category. Several variants were put forward.

5.20 First, there were the "fixed-helm" variants, in which it was proposed that a Presidential candidate be required to contest the elections on the same ticket as a

running mate, with the running mate then being installed either as the Vice-President,[241] the Speaker of Parliament,[242] or the Chairman of the CPA[243] for the duration of the Presidential term. Second, there were "rotating-helm" variants, which envisaged members of the elected team taking turns to occupy the Presidential office over the course of the Presidential term. For example, one member of a two-man team would be President for half the term, while the other played a supporting role (for example as the Vice-President[244] or the chairman of the CPA[245]), with both trading positions midway through the Presidential term.

5.21 The Commission considers that the group-representation models are not optimal. The fixed-helm variant carries with it the risk of entrenching any perceived marginalisation of minority races, particularly if the President is frequently from the majority race and the supporting officeholder from a minority race.[246] This would not achieve the goal of securing minority representation in the highest office in the land. The rotating-helm variant is also problematic, because the regular switching of roles and the consequent reduction of individual tenures will be disruptive, especially so for an office such as that of the President where continuity is vital, given that he is supposed to serve as a unifying symbol. Moreover, history has shown that the President grows in all the aspects of his office, with the accumulation of experience over the course of time.[247]

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241 Written submissions of Brian Chang; Loke Hoe Yeong.
242 Written submissions of Loke Hoe Yeong.
243 Written submissions of Brian Chang; Loke Hoe Yeong.
244 Written submissions of Assoc Prof Eugene Tan.
245 Written submissions of Brian Chang; Dr Kevin Tan.
246 This shortcoming of the fixed-helm variant was alluded to by one pair of contributors: written submissions of Dr Jaclyn Neo & Asst Prof Swati Jhaveri.
247 Professor Vernon Bogdanor writes in *The Monarchy and the Constitution* at p 418:

> One can only speculate on the influence of the Queen. Three thoughts can perhaps be ventured. The first is that the influence of a sovereign is likely to increase during her reign, for the longer she remains on the throne the greater the political experience which she accumulates. By 1996, the Queen will have been on the throne for 44 years, known nine Prime Ministers and have enjoyed a longer experience of public life than anyone who is politically active today. 'In the course of a long reign', Bagehot declared, 'a sagacious king would acquire an experience with which few ministers could contend".

5.22 The Commission also considers that both variants, insofar as they entail the creation of an office of the Vice-President, are undesirable. It is unclear if there would be sufficient meaningful responsibilities to engage a full-time Vice-President. This was why earlier plans to introduce a Vice-President were eventually abandoned. During the debates following the Second Reading of the 1990 EP Bill, then Deputy Prime Minister Goh Chok Tong explained the reason for this:[248]

> We have dropped the Vice-President as a running mate for the President. This is because some MPs were opposed to the idea when we debated this issue the last time. Our reason for dropping it is the difficulty of finding a running mate for the President. He does not have a full-time job. Our original proposal was for a Vice-President who can be a Minister. If we have a Vice-President and you do not allow him to hold office of profit or a job, other than his particular position, how do you occupy his time? It is a practical problem. **We do not want to have a very high-powered man who can be your President to be doing nothing for six years**. [emphasis added]

5.23 Installing the supporting officeholder in a more functional role, such as the Chairman of the CPA, is also problematic in that it may compromise each team member's ability to discharge his responsibilities. For example, if one of the team members is installed as the Chairman of the CPA, with the other as President, one may question the extent to which the Chairman of the CPA would be able to function as a truly independent advisor to the President, given that they were running mates. The dynamics within the CPA might also be compromised if the Chairman resorted to the perceived legitimacy of his elected mandate to trump the views of the other CPA members.

5.24 Another variant of the group-representation model which was proposed to the Commission was the triumvirate model, which drew inspiration from the system in Bosnia Herzegovina.[249] The essential idea was to transform the Presidency into a three- or four-man office, with each seat reserved for a person from a different race. The Commission does not accept this approach for several reasons. First, if the term is

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248 *Singapore Parliamentary Debates, Official Report* (5 October 1990) vol 56 at col 562 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

249 Written submissions of Dr Jaclyn Neo & Asst Prof Swati Jhaveri; Chan Kai Yan; Chua Jun Yan; Wesley Chioh.

apportioned among the team, each occupant of the office would only hold it for a relatively short time and this would carry with it the disadvantages enumerated at paragraph 5.21 above. On the other hand, if the team members hold office concurrently, impasses might arise within the Presidency if the co-Presidents do not agree on matters. On either footing, it would appear that the President (for the fractional term) or the Presidents (for the joint term) would find it difficult to develop a rapport with the people in a way that is integral to the symbolic and unifying role of the President. Finally, assuming it is to be a collective venture, it is doubtful that there would be sufficient meaningful responsibilities to engage three full-time Presidents. In any event, the Commission considers that the system practised in Bosnia Herzegovina, which was developed against a background of internecine warfare, has little, if any, relevance to Singapore's context.

Pre-assigned cycles

5.25 Another possible model that the Commission considered was having pre-assigned cycles, where Presidential elections would proceed in a pre-determined order, with particular elections reserved for persons from a specific ethnic group.[250] As an example, elections could proceed on a three-term cycle, with the first term assigned for Chinese candidates, the second for Malay candidates and the third for candidates from the Indian or other ethnic groups. A more sophisticated variant of this might take the form of a six-term cycle, with open and unrestricted elections held for the second, fourth and sixth election terms, and the first, third and fifth terms reserved exclusively for candidates who are Chinese, Malay, and those who are either from the Indian or other minority communities respectively.

5.26 The Commission does not favour the adoption of pre-assigned election cycles. While this model has the elegance of simplicity, there are at least two objections. First, such a model seems highly obtrusive in that it prescribes a rigid formula which inflexibly assigns each race a pre-determined election term, without regard to any other

[250] This was discussed, for example, in the written submissions of Assoc Prof Eugene Tan and Loke Hoe Yeong.

competing considerations. The Commission notes that a simple rotation might afford minorities disproportionate representation (in relation to population size) and thereby, as was suggested by some contributors, violate the principle of racial equality.[251] Second, this model features an undesirable level of permanence, in that it will continue to operate regardless of any progress Singapore might make towards the ideal of a race-blind society. In that sense, it may even impede such progress.

Hiatus-triggered safeguards

5.27 Some contributors suggested hiatus-triggered models, where an election would be reserved for a particular racial group only if that racial group had not been represented in Presidential office for a certain number of years.[252] Another variant of this proposal was that candidates from racial groups which have been overrepresented in recent years (such as where the President had been from that racial group for a given number of terms) be prevented from contesting in a particular election cycle.[253]

5.28 The Commission favours this approach but, for reasons that are set out at paragraphs 5.36–5.41 below, favours the former, rather than the latter, variant of this model.

Hybrid models

5.29 There were other proposals which combined different aspects of the mechanisms above.

5.30 For example, one contributor suggested a combination of pre-assigned cycles with a group-representation model.[254] Under this proposal, there would be three election cycles, with the first two running for 6 years and the last for 8 years. The third

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[251] Written submissions of Loke Hoe Yeong.
[252] Written submissions of Dr Mathew Mathews; the Eurasian Association (albeit the latter's suggestion was with some reservations).
[253] Written submissions of Dr Jaclyn Neo & Asst Prof Swati Jhaveri; Dr Loo Choon Yong & Loo Choon Hiaw.
[254] Written submissions of Suppiah Dhanabalan.

cycle would have to be contested by a team of 2 members, with at least one member from a minority ethnic group. The pair that prevailed at this third cycle would take up the position of President and Vice-President, and they would switch positions midway through (*ie*, at the end of four years).

5.31 Another contributor suggested a combination of a hiatus-triggered model and a group-representation model.[255] Under this proposal, candidates would run in a team with one lead candidate accompanied by one or two running mates, with at least one of the candidates in the group coming from a minority race. The running mate(s) would be appointed to the CPA. If 2 consecutive elections yielded a President who was not from a particular ethnic minority, the lead candidate for the next election would then have to be from that ethnic minority.

5.32 The Commission does not favour use of these hybrid models as they give rise, in varying degrees, to the same difficulties which plague the primary models from which these hybrids drew their inspiration: see paragraphs 5.21–5.24 above for the difficulties associated with the group representation model and paragraph 5.26 above for the difficulties associated with pre-assigned cycles.

Other models

5.33 There were two other proposals that the Commission considered, which did not fall neatly within any of the categories identified above.

5.34 One proposal was to have a single candidate nominated by a council of nominators and confirmed by Parliament, before being subsequently confirmed by the electorate in a simple yes-or-no vote. This system sought to retain Parliamentary control over the selection of the candidate (and thus the ethnic group the President would come from), while ensuring that the candidate possessed the legitimacy that came from an electoral mandate. While this proposal dealt squarely with the issue of minority representation in the Presidential office, the Commission considers that it

[255] Written submissions of the Eurasian Association.

carries operational difficulties. For a start, it is not clear that such a candidate can claim to possess the electoral mandate which the contributor claimed would be conferred. It was suggested that this could be likened to a referendum on whether to accept the candidate. Even assuming this were acceptable in principle, the electorate might repeatedly disagree with, and refuse to confirm, the nominees put forward by the council of nominators and confirmed by Parliament, leading to an unending chain of referendums, which the contributor in question acknowledged was a possibility.[256] There is also another, more fundamental objection. Under this proposal, Parliament would in effect have a veto over the appointment of the President, even though that officeholder is meant to act as a check on the Government. This gives rise to the unsatisfactory situation that the holder of the first key, namely the Government, would be able to exercise a veto over the identity of the holder of the second key through the Parliamentary vote.[257]

5.35 Another proposal was for the President to be chosen from among the members of the CPA.[258] Under this proposal, the CPA would consist of 2 elected members (voted in by the electorate in a national election) and 4 appointed members and the CPA would vote for one from among their number to be President. The contributor further suggested that it be mandated that the CPA contain at least one representative from each of Singapore's major races, to ensure that candidates from minority races had a fair opportunity to be elected as President. The Commission does not agree with this as it considers that this proposal would likely politicise the functioning of the CPA and impinge on its independence. Those CPA members who voted for the President might be more inclined to support him, while those who did not might not be so inclined. Furthermore, given that 4 of the 6 members of the CPA under this proposal are appointed, there is a good chance that the President will be one of the 4 *appointed* members of the CPA, rather than from the 2 popularly elected ones. This could disaffect the electorate.

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256 Oral representations of Edwin Yeo (Transcripts for 18 April 2016 at p 80).

257 Under the Westminster system, the Government is almost invariably composed of members from the party (or parties, if a coalition Government is formed) which secured the most number of seats in Parliament.

258 Written submissions of Ronald Wong.

The proposed model

5.36 As noted above, the Commission considers that the hiatus-triggered model is the best model of those it examined, entailing the lowest degree of intrusiveness. It enables the representation of *all* racial groups in the Presidency in a meaningful way while being minimally prescriptive. It is also simple and does not carry with it the operational complexities associated with the other models considered above. Further, it is also race-neutral as it does not single out any one ethnic group for protection. Most importantly, it has a "natural sunset" – if free and unregulated elections produce Presidents from a varied distribution of ethnicities, the requirement of a reserved election will never be triggered. It will only be invoked when there has been an exceedingly long period of time during which no member of a particular ethnic minority has occupied the Presidency, which is a scenario that the Commission would agree is "worrying".[259]

5.37 By way of illustration, the hiatus-triggered safeguard could be structured as follows: When a member from any racial group has not occupied the President's office after "*x*" continuous terms, the next Presidential election will be reserved for a candidate from that racial group. For this purpose, the relevant racial groups may be categorised into 3 groups: (a) Chinese (b) Malay and (c) Indian and other communities.[260] The mechanism set out in section 27C of the Parliamentary Elections Act for determining which racial group any given individual belongs to (this is for the purposes of eligibility to contest in a group representation constituency in Parliamentary elections) could be adapted for this purpose.[261] The appropriate value for "*x*" must be set taking into account a variety of considerations. If the value is set too low, the system becomes more invasive and comes close to a pre-assigned cycle. Conversely, if the value is set too high, it may fail to achieve the goal of meaningfully encouraging minority representation in the Presidency. For example, if *x* were set at 8,

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259 See paragraph 5.15 above.

260 These groupings are similar to those adopted in the group-representation constituency model: see section 39A of the Constitution and section 27A of the Parliamentary Elections Act (Cap 218, 2011 Rev Ed).

261 Parliamentary Elections Act (Cap 218, 2011 Rev Ed).

half a century would have to go by before an election is reserved for an ethnic group which has, in the interim, not assumed the Presidency.

5.38 The value of "*x*" also tends to set an implicit cap on the number of ***successive*** terms a person can occupy the office of President.[262] One might argue that this could impede the President from growing in experience within the office.[263] However, the Commission notes that even if elections for the office of President must be reserved from time to time for particular minority groups, this would be a relatively infrequent occurrence and, in that sense, it may only occasionally impede an incumbent from seeking re-election. Furthermore, even if the incumbent is barred from running for a particular term which has been reserved for candidates of a racial group other than his own, there would be nothing to prevent him from running in the following term. The implicit cap would thus only be temporary and any loss of talent would therefore be limited.

5.39 All things considered, the Commission proposes setting "*x"* at the value of 5, as that would strike the right balance between these competing considerations. On this basis, a reserved election would be triggered if no candidate from a particular racial group has held the office of President for 30 years or more.

5.40 In such a case, the Commission considers that the holding of a reserved election, triggered by the absence of any Presidents from a specific racial group, will likely encourage candidates from that group to step forward and contest the next election. If, during such a reserved election, it should transpire that no qualified candidate from the racial group in question emerges, the Commission considers that the

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[262] This can be illustrated by way of an example, where *x* is set at 5 terms. If there has been an Indian President for two successive terms and this is followed by a Chinese President in the third term, this would mean that the Chinese President can occupy the Presidential office for a maximum of three terms. At the end of his third term, it would mean that there was no Malay President for 5 successive terms and the next election would have to be reserved for a Malay candidate.

[263] The Commission also notes that the Select Committee had explicitly rejected a suggestion that the number of terms for which a person could stand as Elected President be restricted to 2, as this "merely deprives the country of the services of someone who has in fact a proven track record of being a good President": see 1990 Select Committee Report at ¶14(h).

election should then be opened to candidates from all races, while the election subsequent to that should again be reserved for the same unrepresented racial group. A scenario could conceivably arise where more than one racial group are eligible for reserved elections at a given point in time. This may be illustrated with the following scenario: An election is reserved for racial group A because no candidate from racial group A has been elected for 5 consecutive terms (assuming *x* is pegged at 5). During the reserved election, no candidate from racial group A steps forward to contest, with the result that the election is opened to all races. Ultimately, a candidate from racial group B gets elected. By the next election, racial group A would have had a hiatus of 6 terms, but by then, racial group C reaches a 5-term hiatus (i.e. the office has not had a President from racial group C for 5-terms). Both racial groups would then be eligible for reserved elections. This is a situation which should be recognised and catered for by prioritizing among the groups that have not been represented in the Presidency. A possible solution would be to reserve the election in question by prioritizing the racial group with the longer hiatus. In the example above, the election would be reserved for racial group A (having a hiatus of 6 terms) while the election after that would be reserved for racial group C. If, during the election reserved for racial group A, no candidate from that racial group steps forward to contest, the election could be reserved for racial group C instead.

5.41 Finally, the Commission reiterates its conviction that under no circumstances should the eligibility criteria be lowered to accommodate candidates from any given racial group.

<u>Objections to the use of special mechanisms to secure minority representation in the Presidency</u>

5.42 Before concluding this chapter, it is necessary to address two specific objections that were levelled at the notion of having a mechanism in place to safeguard minority representation. The first was the concern that a President who entered office through a

reserved election might be viewed as a token President who lacks legitimacy.[264] The Commission acknowledges that the concern of tokenism is a legitimate one. However, as pointed out by one contributor, perceptions of tokenism may persist to varying degrees, regardless of how the electoral system is structured and it is ultimately for the candidate, upon taking office, to conduct himself with the dignity and gravitas which befits the Presidency and thereby earn the respect of the electorate.[265] The Commission agrees.

5.43 The second objection raised was a specific point pertaining to the International Convention on the Elimination of All Forms of Racial Discrimination ("**ICERD**") that Singapore signed in October 2015 and which it has indicated it will ratify in 2017.[266] One contributor voiced concerns that mechanisms to safeguard minority representation may fall foul of Article 5 of ICERD, under which state parties undertake to prohibit and eliminate racial discrimination, and guarantee, among other things, the political rights of persons without distinction as to race, colour, or national or ethnic origin.[267] The contributor cited opinions of the United Nations Committee on the Elimination of Racial Discrimination ("**CERD**") as well as decisions of the European Court of Human Rights addressing the triumvirate presidency in Bosnia Herzegovina (to which reference has already been made at paragraph 5.24 above). The contributor counselled that care should be exercised to ensure that any proposed mechanism to safeguard minority representation in the Presidential office does not fall foul of the ICERD.

5.44 The Commission notes that there are material differences between the arrangement in Bosnia Herzegovina and the hiatus-triggered safeguard contemplated by the Commission. A key finding on which the objections of both the CERD[268] and the

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264 Written submissions of Assoc Prof Eugene Tan; Dr Gillian Koh & Tan Min-Wei; Benedict Chan Wei Qi. Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 35); Oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at p 9).

265 Written submissions of Dr Mathew Mathews.

266 International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), 660 UNTS 195 (entered into force 4 January 1969).

267 Written submissions of Brian Chang.

268 Report of the Committee on the Elimination of Racial Discrimination on its sixty-eighth and sixty-ninth sessions (18 August 2006), UN Doc A/61/18 at ¶30.

European Court of Human Rights[269] were grounded appears to have been that the applicable provisions of the constitutional arrangement in Bosnia Herzegovina confined representation in the relevant political institution to members of the three majority ethnic groups, to the exclusion of other ethnic groups. Furthermore, unlike the hiatus-triggered measure that is outlined above, the framework in Bosnia Herzegovina was not designed to be a reserve measure that is resorted to exceptionally. Rather, it applies in every election.

5.45 The proposed measure that the Commission is putting forward at paragraphs 5.36–5.41 above is not envisaged as a permanent and fixed arrangement designed to preserve a static balance of power between several conflict-stricken ethnic communities. Rather, it is designed to encourage the values of multi-racialism and equality which are ingrained in Singapore's history and development. It is also not exclusionary, in that it does not *prevent* the participation of any minority in the contest for Presidential office. Instead, it actually encourages members of ethnic minorities to step forward and run for Presidential office. It is difficult to conceive of a mechanism designed to *protect* racial minorities being deemed racially discriminatory.

5.46 Indeed, Article 1(4) of the ICERD specifically *excludes* from the definition of "racial discrimination" any measure taken to advance the position of certain racial or ethnic groups:

> Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups … as may be necessary in order to ensure such groups … equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The principles that underpin Article 1(4) of the ICERD, namely, that the measures used are minimally invasive, and that the special measures should cease to have effect once there has been adequate advancement of that race, are consistent with the philosophy of

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269 *Case of Sejdić and Finci v Bosnia and Herzegovina, nos 27996/06 and 34836/06* (European Court of Human Rights, Grand Chamber, 22 December 2009) at ¶45.

the Commission in adopting the proposed safeguard to ensure minority representation in the Presidency (see paragraph 5.17 above). The Commission therefore does not consider that the model it has proposed would fall foul of the ICERD.

Other suggestions to address concerns of minority representation

5.47 One contributor suggested that, instead of instituting mechanisms to ensure the election of minorities into office, changes could be made to the electoral system instead. This contributor proposed that, apart from securing the most number of votes in the election, candidates for the Presidency would also have to secure a minimum election threshold of valid minority votes (for instance, a figure between 30 to 40 per cent) in order to be elected as the President.[270] In the event that no candidate satisfies these twin requirements in the first round of voting, run-off elections would be held.

5.48 The Commission is not in favour of this proposal. First, it has the effect of attributing greater weight to the votes of minority members within the electorate, and would consequently appear to run counter to the principle of racial equality. Furthermore, as explained at paragraphs 7.4–7.8 below, the Commission does not support the system of run-off elections as they tend to render the election process cumbersome and complex. It also seems objectionable to have run-off elections that are focused on racial voting patterns since this seems fundamentally inconsistent with the goal of striving for a race-blind society. Finally, it is not clear how the percentage of minority voters who supported a particular candidate may be ascertained. The contributor in question suggested colour-coding the ballot papers according to each voter's race. However, the Commission notes that a serious disadvantage of this is that it would undermine voting secrecy. During the course of his oral representations, the contributor conceded that this was a legitimate concern.[271]

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[270] Written submissions of Assoc Prof Eugene Tan.

[271] Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at pp 44–45).

CHAPTER 6

THE THIRD ASPECT: THE ROLE AND COMPOSITION OF THE CPA

6.1 The Commission turns to the third aspect of its review, which pertains to the CPA. Although the institution of the CPA has been in place since the Elected Presidency was established, reforms to the CPA do not appear to have kept pace with changes made to the Presidency. The CPA's primary function is to advise the President on the exercise of his custodial powers. The fact that the CPA is unelected means that there are considerable constraints on its power to act. The CPA does not have the power to block the President. And where the President agrees with the Government, the views of the CPA will lack any legal or constitutional significance. But the CPA plays a significant role in the balance between the President and the Government, where they disagree *on certain matters*. In these situations, if the President acts with the support of the CPA, the balance is shifted decisively in his favour; but if the President does not act with the CPA's support, the Government might yet be able to overcome the President's opposition through a Parliamentary override.

6.2 As explained in Chapter 3 above, the weight accorded to the CPA's advice to the President differs depending on the power exercised by the President. There are three broad situations:

a) where the President is obliged to consult the CPA, and his refusal to follow the CPA's advice creates the possibility of a Parliamentary override;

b) where the President is obliged to consult the CPA, but his refusal to follow the CPA's advice does not create the possibility of a Parliamentary override; and

c) where the President is not obliged to consult the CPA.

6.3 While it may be clear why, in relation to certain decisions, the President is not obliged to consult the CPA at all,[272] there is no ready explanation for why, in relation to the decisions on which the President is *obliged* to consult the CPA, a Parliamentary override is available in some circumstances, but not in others. This lack of uniformity was noted by Prime Minister Lee in his speech to Parliament on 27 January 2016.[273]

Setting the context: The balance between the Elected President and the Government

6.4 It is well-accepted that the three coordinate branches of the government – the Executive, the Legislature and the Judiciary – act as a check and balance on one another. This, the principle of the separation of powers, is an established mechanism for controlling State power. The Elected President is somewhat unique in that it is a check and balance that operates *within* the Executive branch, in relation to two key assets: Singapore's financial reserves and the Public Service. The addition of this *intra-branch* check (the Elected President on the one hand and the Cabinet on the other) on executive power is justified by the fact, discussed at paragraph 2.54 above, that both these assets are vital to Singapore's survival.

6.5 However, inherent in the concept of checks and balances is the prospect of impasses arising.[274] The ability of the Government to function efficiently is critical and Singapore can ill-afford a logjam in matters touching on the use of its national reserves or the appointment of persons to key public service appointments, given the potentially wide-ranging implications that may follow. A political mechanism is therefore needed to complement the check and balance provided by the Elected President. The refinements made to the Elected Presidency since 1990 were made with this in mind,

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[272] See, for example, the Select Committee's reasons for why the President should not be obliged to consult the CPA in the exercise of his protective functions: at paragraph 2.39 above.

[273] *Singapore Parliamentary Debates, Official Report* (27 January 2016) vol 94 (Lee Hsien Loong, Prime Minister).

[274] The Congressional budgetary impasse in the United States is a case in point: see, generally, Jonathan Weisman and Jeremy W Peters, "Government Shuts Down in Budget Impasse", *New York Times* (30 September 2013) <http://www.nytimes.com/2013/10/01/us/politics/congress-shutdown-debate.html?_r=0> (accessed 8 August 2016).

by enabling Parliament to overcome a Presidential veto in certain circumstances. The Commission is mindful of the fact that in the Westminster system of Parliamentary democracy, Parliament is likely to be dominated by the party from which the members of the Cabinet are drawn (and this has historically been the case in modern Singapore). However, the Commission nonetheless considers that Parliament remains the most suitable forum to decide whether the President's decision should be overridden. This is so because where there is a difference between the President and the Cabinet, this should be debated in a transparent and robust manner and Parliament is the best place for such a debate to take place, as its proceedings are publicly accessible.

6.6 The Government must therefore run a political risk should it decide to invoke the Parliamentary override mechanism, as it would have to publicly justify its case for overriding the President's decision and also respond cogently to the arguments raised in opposition to the Government's proposed course of action. If the requisite majority in Parliament is not convinced by the proposal to override the President's decision, the Government will have to bear the political cost of failing to secure the support of Parliament. This ensures that the Government will not lightly invoke the Parliamentary override mechanism and ensures the enduring efficacy of the second key as a safeguard mechanism. It is further strengthened by the existing requirement that a Parliamentary override has to be passed by a super-majority of two-thirds instead of a simple majority.

6.7 Concerns were raised by some contributors over the legitimacy of the CPA to play even this limited role, given that it is an unelected body.[275] The Commission considers that these concerns must be seen in their proper context. It is true that the CPA is unelected. But the CPA's role is a body that applies a second level of consideration to the issues that the President will himself consider and must decide on. The CPA has no power of initiative and its role is limited only to weighing in on the

[275] Written submissions of Assoc Prof Eugene Tan; Dr Gillian Koh & Tan Min-Wei; Grace Teo Pei Rong, Carina Kam Zhi Qi, Amelia Chew Sihui & Russel Wong Yung; Joshua Hiew, Samyata Ravindran, Kyle Yew & Sanjev Gunasekaran; Renee Tan Ru Yan, Estella Low Yue Jia, Bryan Ching Yu Jin, Yeo Yong Jin & Walter Yeo Yeo En Fei; Chua Jun Yan; Cheryl Theng Hui Lin, Colin Wu Guolin, Loy Ern Tian & Ruelia Nesaranjin.

balance between the President and the Government. With this in mind, the Commission considers that given the diversity of those who appoint the members of the CPA, coupled with effective staggering of their appointment periods, the CPA's independence is sufficiently secure and it may legitimately play this role.

The President's discretionary powers and the scope for Parliamentary override

6.8 When the Elected Presidency was first introduced in 1990, the Parliamentary override was only available for the President's veto of Supply Bills or Supplementary Supply Bills. At the Second Reading of the 1990 EP Bill, then Deputy Prime Minister Goh Chok Tong explained the rationale for confining the Parliamentary override in this way:[276]

> This overriding mechanism by Parliament is confined only to Supply Bills and Supplementary Supply Bills **because these Bills originate from Parliament**. It does not apply to the budget of a Government company or statutory board, or to appointments in the public services, because **these matters do not come under the direct purview of Parliament**. If there is a dispute here, the executive and the President will have to resolve it, through fresh submissions of budgets and nominees for appointments. [emphasis added]

Originally conceived, the Parliamentary override was intended as a tool to protect the prerogative of Parliament in relation to matters which fell within its domain. Thus, the view was that Parliament should have the final say only on matters which came within the purview of the Legislature; Parliament should not step in to resolve impasses between the President and the Government (or, more specifically in this context, the Cabinet) on matters which are solely within the purview of the Executive.

6.9 However, this position did not prevail. In 1996, the Government widened the range of instances in which the Parliamentary override could be invoked. The Constitution of the Republic of Singapore (Amendment) Bill 1996 expanded the scope of the Parliamentary override to include the President's veto over key appointments.[277]

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[276] *Singapore Parliamentary Debates, Official Report* (4 October 1990) vol 56 at cols 465–466 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

[277] Sections 5–7 of the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996).

At the Second Reading of this Bill, then Prime Minister Goh Chok Tong explicitly noted that he had previously expressed the view that Parliament should not step in to resolve impasses between the President and the Executive. However, he said that it would be "better to have a mechanism to resolve the impasse, rather than force the [Cabinet] to nominate another candidate [for the position in question]", since this might result in an inferior candidate being appointed given Singapore's limited talent pool. He further explained that in many cases, the difference between the Government and the President might be "one of judgment" over the candidate's suitability, and that the President might not be objecting on the basis that the candidate was plainly unfit for office. He explained that this might be so where the CPA supported the Government's nomination but the President did not.[278] This rationale was considered compelling enough to warrant subjecting the proposed appointee to the potentially unpleasant experience of having his appointment debated publicly in Parliament.[279]

6.10 Thus, the original principle for the Parliamentary override gave way to a more pragmatic philosophy of using it more generally as an instrument to resolve differences of opinion which arose between the Government and the President. This was done bearing in mind particular operational considerations, such as Singapore's limited talent pool.

6.11 As will be elaborated below, the Commission considers that the 1990 EP Bill need not have limited the availability of Parliamentary override to matters which come within the purview of the Legislature. Parliament is of course a *legislative* body, but it should also be remembered that it is the most important *deliberative* body in the country. As noted at paragraphs 6.5–6.6 above, the transparency of Parliament's deliberative process makes it especially well-placed to resolve impasses between the

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278 *Singapore Parliamentary Debates, Official Report* (28 October 1996) vol 66 at col 765 (Goh Chok Tong, Prime Minister).

279 But Prime Minister Goh Chok Tong (as he then was) considered that the President and the Cabinet will not often disagree on key appointments and, if they did, the Cabinet could assess whether it was prudent to bring the matter to Parliament so as to get a particular candidate appointed on a case-by-case basis. See *Singapore Parliamentary Debates, Official Report* (28 October 1996) vol 66 at cols 765–766 (Goh Chok Tong, Prime Minister).

President and the Government. The Commission thus considers that the Parliamentary override *should be available* in respect of the President's exercise of *all*:

a) his custodial powers over the reserves; and

b) his powers pertaining to key public service appointments.

The Commission considers that there should be no possibility of override in respect of the third category of his powers, namely, those relating to his protective functions identified at paragraph 3.10 above. This is chiefly because these concern sensitive matters which, for the reasons set out at paragraphs 6.21–6.23 below, may not be conducive to be debated in Parliament. Further, as explained in the same paragraphs below, other considerations affecting these protective powers warrant their being treated differently.

Fiscal powers

6.12 As it now stands, a Parliamentary override is available in relation to the following fiscal matters:

a) the President's veto of Supply Bills, Supplementary Supply Bills or Final Supply Bills; and

b) the President's veto of the appointment or removal of the heads of key institutions that hold significant amounts of Singapore's fiscal assets (namely, the Fifth Schedule entities).

6.13 However, there is no prospect of the President's decisions in respect of the wide range of fiscal matters set out in the table at paragraph 3.7 above being overridden by Parliament. This is incongruous, given that these matters too may have significant systemic impact and which, for that very reason, have (rightly) been subjected to Presidential oversight.[280] The Commission considers that there is no reason in principle

[280] One contributor argued that the application of the override mechanism was inconsistent, and should be regularised so that it applies consistently across the board to the President's

for treating these powers differently and therefore, these too should be subject to the override mechanism so as to ensure that with the necessary safeguards, it is at least possible to avoid the potentially far-reaching consequences of a logjam affecting decision-making in these areas.

6.14 The Commission thus proposes that:

a) the President should be obliged to consult the CPA before exercising his discretion in respect of *all* fiscal matters touching on Singapore's reserves, including those set out in the table at paragraph 3.7 above; and

b) the exercise of a Presidential veto on any of these matters should be capable of being overridden by Parliament in the appropriate circumstances.

Public service appointments and removals

6.15 Article 22(1) gives the President discretion over the appointment and removal of a number of very senior officials who play an instrumental role in Singapore's governance.[281] The President is required to consult the CPA before vetoing any proposed appointment to these offices or the removal of a person from such an office. Any such veto is subject to a Parliamentary override if exercised against the CPA's advice.[282]

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veto powers relating to all fiscal matters: written submissions of Michael Poh Cheng Hock.

281 The full list of appointments comprises: (a) the Chief Justice, Judges of the Supreme Court, and the Judicial Commissioners, Senior Judges and International Judges of the Supreme Court; (b) the Attorney-General; (c) the Chairman and members of the PCMR; (d) the chairman and members of the Presidential Council for Religious Harmony; (e) the chairman and members of an advisory board constituted to advise on detentions under the ISA; (f) the Chairman and members of the Public Service Commission; (fa) a member of the Legal Service Commission (other than an ex-officio member); (g) the Chief Valuer; (h) the Auditor-General; (i) the Accountant-General; (j) the Chief of Defence Force; (k) the Chiefs of the Air Force, Army and Navy; (l) a member (other than an ex-officio member) of the Armed Forces Council; (m) the Commissioner of Police; and (n) the Director of CPIB. See Art 22(1) of the Constitution.

282 The President is obliged to consult the CPA only when he intends to *veto* the proposed appointment/removal. Article 21(3) of the Constitution does not oblige him to consult the

6.16 Among the offices listed in Article 22(1), the office of the Attorney-General is governed by a further provision in Article 35(4)(*b*). This allows the Attorney-General to remain in office beyond the age of 60 if the President, acting in his discretion, concurs with the advice of the Prime Minister. There is no requirement for the President to consult the CPA before refusing such an extension.[283]

6.17 The Commission considers that there is no reason for this difference and proposes that for consistency with Article 22(1), the President should be required to consult the CPA before deciding on any proposal to extend the tenure of the Attorney-General beyond the age of 60, and that any veto to such a proposal should, if taken against the advice of the CPA, equally be subject to a Parliamentary override.

6.18 The Constitution also endows the President with discretion over certain other appointments in the Public Service, specifically:

a) appointments to any personnel board established to exercise power over officers in Division I of the Public Service;[284]

b) the appointment of the Vice-President of the Legal Service Commission;[285] and

c) appointments to any Legal Service Commission personnel board.[286]

In all these cases, the President receives advice either from the Prime Minister (in the first two cases) or the Legal Service Commission (in the case of appointments to the Legal Service Commission personnel board), but he is not required to consult the CPA before deciding whether to veto any such proposed appointments.[287]

Council of Presidential Advisors ("CPA") if he intends to appoint/remove the officeholder in accordance with the proposal placed before him.

283 This is not one of the matters which fall within the ambit of Article 21(3) of the Constitution.

284 Article 110D(5) of the Constitution.

285 Article 111(2H) of the Constitution.

286 Article 111AA(6) of the Constitution.

287 The Commission received feedback that the application of the override mechanism in respect of Public Service appointments is inconsistent and should be regularised so that it

6.19 Again, for consistency with Article 22(1), the Commission proposes that the President be required to consult the CPA before deciding whether to veto any of these appointments, and that any such veto should, in the appropriate circumstances, be subject to the Parliamentary override.

The requirement to consult the CPA and the Parliamentary override: Should these be extended to other discretionary powers of the President?

6.20 As mentioned at paragraphs 3.10–3.11 above, the President is not required to consult the CPA when he exercises his powers pertaining to his protective functions in relation to (a) detention orders under the ISA; (b) restraining orders under the MRHA; and (c) CPIB investigations. The 1990 Select Committee Report noted that in relation to ISA detentions and MRHA Restraining Orders, the President already has the benefit of the views of specialist advisory boards.[288] The Select Committee was also against mandating consultation with the CPA for CPIB investigations, given that these were sensitive and preliminary in nature.

6.21 The Commission agrees with the reasons given by the Select Committee and proposes to maintain the *status quo* in respect of these protective functions of the President. The issuance of orders for preventive detentions and restraining orders under the ISA and MRHA respectively, are each governed by a carefully devised legislative framework. Under both, the President has available to him the expertise of specialist advisory boards. These each include various other check and review mechanisms to safeguard against arbitrary and unjustified deprivations of liberty, of which the requirement that Presidential assent be obtained is but one. In this regard, it should be noted that these matters will be presented to the President for decision if the Advisory Board or the Presidential Council for Religious Harmony disagrees with the Cabinet. In such cases, the issues and the differences of views would already have been crystallised

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applies consistently across the board, to the President's veto powers relating to all personnel appointment matters: written submissions of Michael Poh Cheng Hock.

[288] One of the contributors also expressed the view that the CPA might not be equipped with the expertise to advise on the matters dealt with by the specialist advisory boards: written submissions of Assoc Prof Eugene Tan.

and the President would have the benefit of both sets of opinions (the relevant specialist Board or Council on the one hand, and of the Government, on the other) and his task is to choose between them. As for CPIB investigations, the Commission notes that – quite apart from the sensitivities associated with early disclosure – investigations may sometimes be prejudiced if information is released prematurely. The Commission therefore considers that there is neither a need for the President to consult the CPA on these matters nor should there be a basis for a Parliamentary override in the event of a veto.

6.22 In any event, Article 21(4) of the Constitution empowers the President to consult the CPA on any matter. He is thus not precluded from seeking the counsel of the CPA should he so desire.

6.23 For completeness, the Commission also considered whether the President ought to consult the CPA before exercising any of the historical discretionary powers noted at paragraph 2.10 above (such as the appointment of a Prime Minister). These powers predate the introduction of the Elected Presidency and the CPA. The Commission considers that there is no compelling reason to require the President to consult the CPA on these matters. However, as already noted, there is nothing to prevent him from doing so, should he so wish.

Strengthening the CPA

6.24 As the Commission proposes that the range of Presidential powers which are subject to the Parliamentary override be widened, it considers that the CPA should be strengthened both in terms of its size and also in terms of the eligibility criteria for its members.

Augmenting the CPA's size and structure

6.25 The current structure of the CPA is devised to ensure its independence. It comprises 6 members, with the President and the Prime Minister each appointing 2 members, and the Chief Justice and the Chairman, PSC appointing 1 each. The President additionally appoints, from amongst the 6 members, the Chairman (who has a

casting vote). The current 6-man composition of the CPA was arrived at in 1996, when the scope of the Parliamentary override was widened.[289] Specifically, the Chief Justice was given the power to nominate the sixth CPA member. In moving the Constitution (Amendment) Bill 1996, then Prime Minister Goh Chok Tong explained that the intention behind this change was to "build up the Council as an independent body".[290]

6.26 This is not to say that the 2 Presidential nominees and the 2 nominees of the Prime Minister are expected to decide matters in accordance with the wishes of their respective nominators, with the nominees of the Chief Justice and the Chairman, PSC serving as tie-breakers. On the contrary, each member of the CPA is expected to exercise independent judgment. This was emphasised in 2001 by then Minister for Finance Dr Richard Hu who, in moving a Bill to shorten the tenure of re-appointed CPA members, said the following:[291]

> The main reason for appointing CPA members to specified, fixed terms is to give them standing on their own once they are appointed. **They are expected to exercise independent judgment on issues, rather than reflect the views of the person who advised the President to appoint them, be it the President himself, the Prime Minister, the Chairman of the PSC, or the Chief Justice**. Hence, they have tenure in office, and cannot be removed at will by their nominators. [emphasis added]

6.27 It may also be noted that the terms of CPA members may not coincide with the election cycles for either the Presidential or Parliamentary elections, nor do the CPA members vacate their seats when their nominators cease to hold office. CPA members may thus have been nominated by a past President or Prime Minister who is no longer in office and whose views might not be shared by the incumbent President or Prime Minister. This staggered system of appointments was considered and recommended by the Select Committee to enhance independence and continuity in the CPA:[292]

> A separate issue is whether the terms of office of Presidential Advisors should coincide with the terms of the nominating authority. If so, the Presidential

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289 Prior to that, the CPA was composed of only 5 members.

290 *Singapore Parliamentary Debates, Official Report* (28 October 1996) vol 66 at cols 765–766 (Goh Chok Tong, Prime Minister).

291 *Singapore Parliamentary Debates, Official Report* (12 January 2001) vol 72 at col 1301 (Dr Richard Hu Tsu Tau, Minister for Finance).

292 1990 Select Committee Report at ¶31.

> Advisors will effectively be representatives of the authority nominating them, rather than independent advisors to the President in their own right. But if Presidential Advisors are appointed for fixed, staggered terms, an incoming President or Prime Minister cannot immediately replace the incumbent Presidential Advisors with his own personal nominees. The CPA will then develop a continuity and identity of its own. Over time, it should grow in importance, perhaps evolving into a Council of State which several representors favoured.

6.28 The Commission considers that these principles and considerations are valid and should continue to apply. However, because of the expanded scope of work for the CPA that has been recommended in this report, the Commission proposes that the number of its members be increased from 6 to 8, as follows:

a) 3 members nominated by the President;

b) 3 members nominated by the Prime Minister; and

c) 2 other members – one nominated by the Chief Justice and the other by the Chairman, PSC.

6.29 Currently, CPA members are appointed for a term of 6 years but can be re-appointed only for successive terms of 4 years. Prior to the amendments introducing the current position, CPA members were appointed for a term of 6 years with re-appointments for successive terms of *6 years*.[293] When the re-appointment term was shortened to 4 years, it was explained that this was being done because "[h]ealth considerations may not permit [existing CPA members] to commit to serving the full 6-year [re]appointment although they may still be able to make valuable contributions for a shorter term".[294] The Commission does not think that this remains a valid consideration today and proposes that the terms of CPA members should be 6 years each, ***even upon re-appointment***. Moreover, a uniform term will facilitate the *staggering* of the terms of CPA members, which the Commission considers to be important for continuity.[295]

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[293] Section 2 of the Constitution of the Republic of Singapore (Amendment) Act 2001 (Act 2 of 2001).

[294] *Singapore Parliamentary Debates, Official Report* (12 January 2001) vol 72 at col 1301 (Dr Richard Hu Tsu Tau, Minister for Finance).

[295] Staggering was also suggested by one of the contributors: written submissions of Michael

6.30 If the proposal for a uniform term of 6 years (even upon reappointment) is accepted, the Commission proposes that the terms of CPA members be staggered as follows, with the appointment cycle alternating between appointments by the President and Prime Minister, and the two unelected appointers:

Year (based on the hypothetical case that the incumbent President is elected into office in 2000)	**CPA member(s) appointed by:**
2000	• President • Prime Minister
2002	• President • Prime Minister • Chief Justice
2004	• President • Prime Minister • Chairman, PSC

For the staggering mechanism to be effective, the 6-year tenure should be pegged to the *position*, rather than to the date of the nominee's membership of the CPA. Hence, if a CPA member were to become incapacitated after 4 years in office, his successor would initially be appointed for the remaining 2 years of that term, and not for a fresh term of 6 years. This would preserve the staggering of terms.

6.31 The Commission also observes that if this mechanism for staggering the appointments to the CPA is to be adopted, there will likely be a need for some transitional arrangement under which any existing members of the CPA who are to continue to serve may have to be re-appointed for terms other than 6 years, so as to achieve the biennial gap between appointments illustrated in the table above.

6.32 With the expansion of the CPA, appropriate legislative amendments could be made prescribing the requisite quorum for CPA meetings. In any event, the appointment of the 2 alternate CPA members should be retained as a matter of practical necessity so that as far as possible the CPA works with a full complement of members.[296]

Poh Cheng Hock.

[296] Article 37C of the Constitution.

Refining the eligibility criteria for CPA members

6.33 The Commission also proposes that the qualification criteria for membership of the CPA be refined. Under the Constitution, for a person to qualify for appointment as a CPA member, he must:[297]

a) be a Singapore citizen who is at least 35 years old;

b) be resident in Singapore; and

c) not be subject to certain disqualifications.[298]

6.34 Contrary to the views expressed by certain contributors, the Commission does not consider that there is a need to *raise* the eligibility criteria to levels comparable to those applicable to Presidential candidates.[299] CPA members are not elected, but are appointed by the President, Prime Minister, Chief Justice or the Chairman, PSC, all of whom can be expected to exercise the requisite judgment as to the appointee's suitability and experience before making any nomination. However, the Commission considers that there is some merit, having regard to the pivotal role played by the CPA, in setting out some guidelines or precepts in the Constitution to guide the exercise of discretion by those charged with the responsibility for appointing members to the CPA.

6.35 The Commission thus proposes that constitutional provisions be enacted to expressly stipulate the following criteria for CPA membership:

a) The CPA member must be a person of "integrity, good character and reputation".[300]

b) The CPA member must have relevant expertise that will *inform the exercise of the President's powers*. This would direct attention to the

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297 Article 37D of the Constitution.

298 As set out in Article 37E of the Constitution. A member of the CPA cannot: be of unsound mind (Article 37E(*a*)); be an undischarged bankrupt (Article 37E(*b*)); or have been convicted of a crime in Singapore or a foreign country and sentenced to imprisonment for a term of more than one year or to a fine of more than $2,000 (Article 37E(*c*)).

299 Written submissions of Assoc Prof Eugene Tan; Asst Prof Jack Lee; Alexander Kamsany Lee, Ko Yuen Hyung, Mohamed Arshad bin Mohamed Tahir & Mok Zi Cong.

300 This mirrors Article 19(2)(*e*) of the Constitution, which applies to Presidential candidates.

importance of appointing persons with deep expertise in relevant fields, such as those who have held senior Government positions, or those who have distinguished themselves in areas such as law, accounting or business.

c) The appointment of any individual CPA member should add to the CPA's diversity of experience *as a collective body*, so that the CPA as a whole will possess the requisite breadth and depth of experience to better advise the President.

6.36 The Commission reiterates its view that because of the seniority of the appointers, it is not necessary to go beyond these general provisions to set out eligibility criteria for CPA members at a more prescriptive level. Indeed, this could result in the exclusion of members who might otherwise potentially contribute valuable specialist knowledge to the CPA. Those contributors who advocated more prescriptive eligibility criteria accepted that the CPA has always had highly-qualified members with diverse skills, due to the conscientious exercise of discretion by those charged with the responsibility of appointment. Their key concern was that such appointments should not be left to chance.[301] However, some of these contributors were invited to present oral representations and during the hearing, they accepted that having a number of more general precepts, such as those outlined above, would suffice and there might not be a need for rigidly-defined eligibility criteria.[302]

6.37 Some contributors also suggested that the CPA should have a specified number of minority members.[303] The Commission does not agree. The Commission does not consider that this would advance the goal of multi-racial representation or benefit the office of President. Although CPA members play a critical role in the President's

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[301] Written submissions of Alexander Kamsany Lee, Ko Yuen Hyung, Mohamed Arshad bin Mohamed Tahir & Mok Zi Cong. Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 49).

[302] Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 49); Dr Kevin Tan (Transcripts for 6 May 2016 at p 39).

[303] Written submissions of Ronald Wong; Dr Jaclyn Neo & Asst Prof Swati Jhaveri; Dr Loo Choon Yong & Loo Choon Hiaw; Chua Jian Wei.

decision-making process, they do not share the same visibility in the public eye as the President. Theirs is not an office with ceremonial or symbolic significance. Rather, the CPA is primarily a body of independent specialist advisors. It should be noted that, as in virtually every other aspect of public life in Singapore, members of minority communities have been appointed to the CPA on the basis of their expertise. However, it is their expertise, and not their ethnic background, which is relevant to the tasks confronting the CPA.[304] The Commission cannot see that the CPA would be better equipped to advise the President, just by virtue of having minority members. Finally, the Commission reiterates the point it has already made at paragraph 5.14 above, which is that the Presidency is a singular institution by reason of the immensely important symbolic function vested in that office. This alone might justify a modest adjustment to ensure occasional minority representation in the office of President. There is no compelling justification for extending this to the CPA.

Calibrating the threshold for override against the degree of CPA support

6.38 It will be recalled that the CPA was originally conceived of as a group of trusted advisors to the President. The Second White Paper's proposal for a Parliamentary override then introduced a secondary role for the CPA. This secondary role entailed it acting as a counterbalance that weighs in when the President decides to exercise his veto against a proposed action of the Government. A Presidential veto could, in some circumstances, be overcome by a requisite majority of Parliament *if* the President had departed from the advice of the CPA in exercising his veto powers.

6.39 The Commission considers that in order for the CPA to continue playing this secondary role, it must be structured to be independent. The premise behind the present constitutional arrangement is that if an independent body of experts concludes that it

[304] One team of contributors took the position that, while there was a certain symbolism behind the President as a ceremonial Head of State reflecting the multiracialism of Singapore, the focus of the CPA should be on expertise and specialist knowledge, such that the CPA should not require any engineering to ensure that minorities are represented: oral representations of Alexander Kamsany Lee, Ko Yuen Hyung, Mohamed Arshad bin Mohamed Tahir & Mok Zi Cong (Transcripts for 22 April 2016 at p 49).

does not agree with the position taken by the President, then the President's position on that issue might warrant a second look in Parliament.

6.40 As it currently stands, the CPA makes decisions by a simple majority and the Chairman of the CPA has a casting vote in the event of an even split amongst the members.[305] The result is a somewhat blunt mechanism in the sense that a simple majority of the CPA can inoculate a Presidential veto from a Parliamentary override. The Commission considers that this can be refined by providing that the terms on which Parliament may override a Presidential veto should differ depending on the degree of support lent by the CPA to his decision. Put simply, the stronger the CPA's support for the President's decision, the more difficult it should be for Parliament to undo that decision.

6.41 The Commission proposes specifically that the requisite Parliamentary majority for overriding the President's decision be calibrated as follows:

a) If the President's decision is supported by an *absolute majority* of the CPA (4 or more out of 6 or, if the Commission's proposal to expand the CPA to 8 members is accepted – see paragraph 6.28 above – 5 or more out of 8), then Parliament *cannot* override the President's objection. On the assumption that both the President's nominees support the President's position, such a majority would mean that the President acts with the support of at least two members of the CPA he did not appoint. In such a case, the President's veto should be conclusive and ought not to be liable to be overridden.

b) If the CPA is evenly split, but the Chairman exercises his casting vote in the President's favour, then Parliament may only override the President's veto if it acts by a two-thirds majority. On the assumption that both the President's nominees support the President's position, this would mean that the President was only able to garner the additional

[305] Article 37J(2B) of the Constitution.

support of just one other member of the CPA. The fact that an equal number of the members of the CPA oppose the President's position warrants that the matter be reviewed by Parliament. However, given that there is substantial support for the President's position, Parliament should only be able to override the veto with a super-majority.

c) If the President's decision fails to garner the support of a majority of the CPA, Parliament should be able to override it with a simple majority. The inability of the President to garner the support of even half the CPA would suggest that his Presidential veto might not be based on sufficiently persuasive grounds. Allowing Parliament to override it with a simple majority would enable the Government to press ahead with its intended course of action if it considers it important to do so, but at the political cost and exposure of having the matter debated publicly in Parliament.

6.42 The recalibration that has been proposed stands to refine the balance between the President and the Government, having regard to the extent to which the CPA supports or opposes the President's position.

6.43 It should first be noted in this regard that the CPA's role is only ever relevant in the event the President *disagrees* with the Government. Where the President agrees with the Government's proposal, as has been noted above, the advice rendered by the CPA has no legal or constitutional significance whatsoever. This is so even if it is collectively opposed to the position that the Government intends to take. In this sense, the CPA has far less power than does the President.

6.44 Where the President is opposed to an intended action of the Government, it might be argued that the proposed recalibration will have the effect of reducing the threshold at which the President's decision may be overridden. Some might argue that this may undermine the efficacy of the second key held by the President, especially as Parliament has historically been and still is dominated by a single political party. However, the Commission considers that it should not be assumed that the Legislature

will always be dominated by a single political party. Hence, in considering the optimal arrangement that would strike the appropriate balance between the powers of the President and those of the Government, this is an exercise that should not be approached from the premise that Parliament will continue indefinitely to bear the complexion it has over the last fifty years. It follows that it should not be assumed that recalibrating the position between the President and the Government will necessarily result in the second key being undermined.

6.45 The Commission considers that the recalibration is desirable in order to guard against the consequences that could flow if those nominated to the CPA either by the President or by the Prime Minister tend towards sympathising with the position taken by their respective appointers. The Commission notes that the staggered appointments to the CPA should reduce the chances of such tendencies, as explained at paragraph 6.27 above. In the Commission's view, the proposed reformulation strikes a better balance between the President and the Government and better caters for the prospect of a difference between the President and the Government arising and being resolved in the best interests of Singapore.

Enhancing the accountability for CPA decisions and the Presidential veto

6.46 The Commission received suggestions that the decision-making process of the CPA should be made more transparent through the publication of the number of votes cast for or against a particular proposal, and the reasons given by the CPA members for their votes. The first set of contributors who put forward this idea accepted that the identity of the members who cast each vote should remain anonymous.[306] However, another set of contributors went so far as to suggest that even the individual votes of each CPA member should be made public, particularly if the CPA's recommendation was not unanimous.[307]

6.47 As it now stands, the Constitution enjoins the CPA to inform the President if its

[306] Written submissions of Alexander Kamsany Lee, Ko Yuen Hyung, Mohamed Arshad bin Mohamed Tahir & Mok Zi Cong.

[307] Written submissions of Dr Loo Choon Yong & Loo Choon Hiaw.

recommendation is unanimous (or, if not, the number of votes cast for and against the recommendation), in the following two instances:

a) where the recommendation relates to any Supply Bill, Supplementary Supply Bill or Final Supply Bill;[308] and

b) where the recommendation relates to the appointment or removal of key public service officials or key appointment-holders in Fifth Schedule entities.[309]

A copy of the CPA's advice or recommendation is then sent to the Speaker of Parliament and thereafter presented to Parliament.[310] Additionally, in the case of (a), the CPA must state the grounds for its conclusion if its advice to the President is to *withhold* his assent to any Supply Bill, Supplementary Supply Bill or Final Supply Bill.[311]

6.48 The Commission considers that the current position can be improved, in relation to what the *CPA should communicate to the President*.[312] There are situations in which the President's departure from the CPA's advice gives rise to the possibility for Parliamentary override, but the CPA is not obliged to provide a breakdown of its votes to the President or Parliament (such as when it comes to the approval of budgets of Fifth Schedule entities). This is unsatisfactory because the President might wish to know the strength of the support or opposition to a proposal before making his decision. In the case of a Supply Bill, a Supplementary Supply Bill or a Final Supply Bill, the CPA is obliged to give the *reasons* for its conclusions only where it recommends that the President withhold his assent. However, the reasons for the CPA's recommendation would conceivably be of great assistance to the President in a much wider array of matters, though knowledge of the CPA's reasons would, of course, be

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308 Article 37J(2)(*a*) of the Constitution.
309 Article 37J (2A) of the Constitution.
310 Article 37K(*b*) of the Constitution.
311 Article 37J(2)(*b*) of the Constitution.
312 Article 37J(1) of the Constitution states that the proceedings of the CPA shall be conducted in private.

particularly valuable if the President's departure from the CPA's advice opens his decision to being overridden by Parliament.

6.49 The Commission considers that a clear and consistent approach should be adopted and proposes that Article 37J be amended such that in *all* situations where the President is obliged to consult the CPA *and* his departure from the CPA's advice could be subject to the Parliamentary override, the CPA's advice to the President should be accompanied by:

a) the votes of each individual CPA member (the effect of which is that the votes would not be anonymous to the President); and
b) the grounds for the CPA's advice (including any dissenting grounds).

6.50 These requirements should be met by the CPA regardless of whether the CPA is split or unanimous in its advice, and irrespective of whether it is advising the President to concur with or veto the relevant proposal on which the President's decision is sought. In short, the CPA should be required to communicate its decision, together with the individual votes of the CPA members and their grounds, to the President. The President should then decide whether to assent to the proposed action or to object to it. In the event the President chooses to assent to the relevant proposal, the Commission considers that there should be no requirement for him to convey the CPA's position (meaning its decision and grounds, as well as the individual votes of CPA members) to the Prime Minister and the Speaker. The Commission takes this view because, as noted at paragraph 6.1 above, where the President assents to the position taken by the Government, the CPA's position has no legal or constitutional significance and it seems irrelevant then what the CPA's views are. This is also consistent with the fact that there are in fact only two keys. However, where the President does not assent to the Government's position, the views of the CPA (and the reasons underlying those views) will have a bearing on whether the Government is able to and, if so, whether it should initiate the override mechanism. Hence, in these circumstances, the President should include the CPA's position, as conveyed to him, when he notifies the Government of his position. This information should be directed to the Prime Minister *and* the Speaker of Parliament, as currently mandated in cases involving vetoes of Supply Bills,

Supplementary Supply Bills, or Final Supply Bills.[313]

6.51 Before leaving this point, there remains one final facet of the above discussion, pertaining to what *the President should communicate to the public*. One team of contributors noted that the President is only obliged to publish his opinion in the Gazette if he *concurs* with (a) Supply Bills, Supplementary Supply Bills and final Supply Bills[314] *or* (b) the budgets and transactions of the Fifth Schedule entities[315] when the President thinks that these will draw on past reserves, but not if he intends to *veto* the Bills, budgets or transactions in question. It was suggested that the President should be required to publish his opinion and the reasons therefor in the Gazette, even in cases where he vetoes the drawing down on the reserves.[316]

6.52 The Commission agrees and would go further. The Commission considers that the President should publish his opinion in any case where he vetoes the proposed action and where that veto may possibly be overridden by Parliament.

Imposing a timeframe within which the President must indicate his refusal

6.53 The Parliamentary override mechanism only becomes available when the President, contrary to the CPA's advice, refuses to concur with a proposal or to perform a required task. This raises a question as to what the position would be if the President simply remained silent. Can he then be taken to have withheld his assent?

6.54 There are existing provisions which address some aspects of this by deeming the President to have consented to the relevant proposal *unless* he provides a negative response within a stipulated timeframe. For instance:

a) The President's power to veto any Supply Bill, Supplementary Supply Bill or Final Supply Bill (referred to at paragraph 3.6(a) above) is

313 Art 37K of the Constitution.
314 Article 148A(1) of the Constitution.
315 Article 22B(2) & (7) and Article 22D(2) & (6) of the Constitution.
316 Written submissions of Alexander Kamsany Lee, Ko Yuen Hyung, Mohamed Arshad bin Mohamed Tahir & Mok Zi Cong.

subject to the caveat that, if the President fails to signify the withholding of his assent to the Bill, he will be deemed to have assented to the Bill upon the expiry of 30 days after the Bill was presented to him for assent.[317]

b) The President may refuse to assent to Bills that amend any non-constitutional legislation if he is of the view that the Bill circumvents or curtails his discretion under the Constitution. He may also, acting on the advice of the Cabinet, refer the Bill to a Constitutional Tribunal of Supreme Court Judges for determination as to whether the Bill does indeed circumscribe or curtail the President's discretionary powers.[318] However, if the President neither signifies the withholding of assent nor refers the Bill to a tribunal, he will be deemed to have assented to the Bill upon the expiry of 30 days from the date the Bill was presented to him.[319]

6.55 The former has been in place since the inception of the Elected Presidency. The Select Committee explained that the rationale for the 30-day timeframe was to cater for the situation where a President deliberately or otherwise delayed the Supply Bill:[320]

> … the Committee recognises that a problem can arise if a President deliberately or otherwise delays conveying his decision on assent to a Supply Bill. Such delay or failure to decide will prevent Parliament from trying to override the President's veto of a Supply Bill, and also defeat the operation of "escape" clauses referring to the previous year's budget. The Committee therefore proposes an amendment whereby if the President does not assent within 30 days after a Supply Bill or Supplementary Supply Bill is presented to him, then he shall be deemed to have assented to the Bill.

6.56 The latter was only introduced when the Constitution was amended in 1996. At the Second Reading of the Constitution of the Republic Of Singapore (Amendment) Bill in October 1996, then Prime Minister Goh Chok Tong explained that the 30-day

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317 Article 148A(5) of the Constitution.
318 Article 22H of the Constitution. (There is a similar provision for amendments to non-core constitutional legislation, in Article 5A, but that provision has yet to come into force.)
319 Article 22H(4) of the Constitution.
320 1990 Select Committee Report at ¶67.

timeframe was intended to "deal with a difficult President". He clarified that the Government had hitherto enjoyed a good working relationship with the President, but the amendment was introduced to deal with future contingencies:[321]

> The President will be required under both the new Articles 5A and 22H to expressly state whether he intends to withhold his assent to the proposed legislation. If the President has not exercised his veto within 30 days of the proposed legislation being presented to him, he is deemed to have assented to the Bill.
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> This is the same provision as the existing Article 148A(5) of the Constitution, which applies to Supply and Supplementary Bills. The Select Committee adopted this Article from a Malaysian provision. Its purpose was to deal with a difficult President. … No such problem has in practice arisen between the incumbent Executive and the incumbent President since the legislation was brought into effect. However, to prevent a problem from arising in future, we are taking the opportunity to insert this provision as a precaution.

6.57 The Constitution does not expressly deal with other situations. To remove any uncertainty, the Commission proposes that a similar "deeming" mechanism be introduced and applied in all situations where the President fails to signify his concurrence with a proposal or his agreement to perform a required task, *and* also fails to signify any refusal to concur with the proposal or perform the task, where such refusal can be subject to a Parliamentary override.[322] In all such situations, if the President fails to give a response within a specified timeframe after the proposal or request has been placed before him, he should be deemed to have concurred with the proposal or performed the task, as the case may be. However, the Commission considers that it may be appropriate, having regard to the various processes outlined in this chapter, for the period of time afforded to the President to be extended from the current 30 days to 6 weeks from the date on which the relevant proposal or request is sent to the President.

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321 *Singapore Parliamentary Debates, Official Report* (28 October 1996) vol 66 at cols 763–764 (Goh Chok Tong, Prime Minister).

322 This was also suggested by one of the contributors: written submissions of Michael Poh Cheng Hock.

CHAPTER 7

OTHER MATTERS

7.1 In this chapter, the Commission considers some specific points raised by contributors which did not fall squarely within the Terms of Reference, but which the Commission considers to be sufficiently significant as to warrant discussion or at least brief mention.

Strengthening the Elected President's mandate through run-off voting

7.2 Some contributors suggested that the President cannot be said to have secured a sufficient mandate if his margin of victory was small, or if he failed to secure more than 50% of the votes cast in the Presidential elections.[323] To address this, various forms of run-off voting were proposed, including the "Instant Runoff" and the "Supplementary Vote" systems in which there would be multiple iterative rounds of voting with the weakest candidates being eliminated after each round until an eventual winner can be determined.[324] The contributors who proposed that there be a two-round system appeared to have been motivated by the fact that the Government had historically secured substantial majorities in the Parliamentary elections and they were cognisant that a President who failed to secure an equivalent electoral mandate might not have the necessary strength to oppose the Government's proposals.[325]

7.3 One contributor suggested that the presence of multiple competing candidates in Presidential elections could result in the votes being spread more evenly among them, with the result that a candidate could be elected despite having secured less than 50%

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323 Written submissions of Dr Kevin Tan; Dr Gillian Koh & Tan Min-Wei; Don Emmanuel Maurice Rosairo de Vaz.

324 Oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at p 34); Dr Gillian Koh and Tan Min-Wei, "Tweaking the Singapore Presidential Election System" <http://www.ipscommons.sg/tweaking-the-singapore-presidential-election-system/> (accessed 8 August 2016).

325 Oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at pp 36–38; Dr Kevin Tan (Transcripts for 6 May 2016 at pp 52–53).

of all votes cast.[326] The results of the 2011 Presidential election were cited as an example.[327]

7.4 The Commission is not in favour of run-off voting. First, as a matter of principle, it is wrong to assume that a candidate's legitimacy is contingent upon him obtaining the support of an absolute majority of the eligible electorate, or even securing an absolute majority of the votes cast. It cannot be the former because if that were the case, nations where voter turnout is poor may be hard pressed to ever claim a legitimate electoral mandate in the majoritarian sense.[328] The Commission also does not agree with the latter proposition. In the Westminster tradition, the first-past-the-post system is a widely-accepted mode of conferring a legitimate democratic mandate on the candidate who emerges victorious at the polls. The question of legitimacy is not a simple numeric exercise of achieving majority support from the voters.

7.5 The Commission considers that the President's legitimacy derives from the fact that he has assumed office through a process which is free, open and fair, and which binds all citizens. The central feature of that process is that he must have garnered the largest share of votes at a nation-wide election. Insistence upon an absolute majority or a majority greater than that enjoyed by the Government in Parliamentary elections is, in the Commission's respectful view, simply not warranted.

7.6 Second, the conduct of run-off elections is likely to be unnecessarily complex and cumbersome and, insofar as it requires voters to participate in a second round of voting, significantly increases the time taken for the election process to come to an end.

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326 Written submissions of Dr Kevin Tan.

327 Oral representations of Dr Kevin Tan (Transcripts for 6 May 2016 at p 54).

328 In the United States, for instance, the turnout for the last Presidential election was less than 55%. The precise figure varies from source to source. The American Presidency Project, housed at the University of California, Santa Barbara, indicates that the voter turnout in the 2012 United States Presidential Elections was 54.87% (The American Presidency Project, "Voter Turnout in Presidential Elections: 1828–2012" <http://www.presidency.ucsb.edu/data/turnout.php> (accessed 8 August 2016)), while Drew DeSilver, writing for the Pew Research Centre, puts the figure at 53.6% (Drew DeSilver, "U.S. voter turnout trails most developed countries" <http://www.pewresearch.org/fact-tank/2015/05/06/u-s-voter-turnout-trails-most-developed-countries/> (accessed 8 August 2016)).

Extending the length of the electoral process is also more likely to increase the avenues for politicisation of the election process and exacerbate the difficulties that have already been mentioned that stem from the need to choose a non-partisan, unifying Head of State through an intensely political process.

7.7 Third, the introduction of run-off elections may worsen the difficulties that candidates from racial minority groups might already face when running for Presidential office. If the system culminates in a run-off election where there is a direct contest between a candidate from the majority ethnic group and one from a minority ethnic group, racial considerations may be brought into sharper relief and may have a much more palpable impact on the outcome of the election.

7.8 Finally, the Commission considers that these concerns are not outweighed by any clear or principled benefit that might arise from the introduction of run-off elections. Of course, there are political systems that have long had such a system of elections; but Singapore has never had it and there is nothing to suggest that the electoral system here is any the weaker as a result of this.

Rules governing election campaigns for the Presidency

7.9 A question was raised as to whether the rules governing campaigning for the Presidency should be changed. The Commission considers that there is great merit in instituting some improvements in this area.

Campaign methods

7.10 In the course of the oral representations, one contributor suggested that in view of the non-partisan nature of the office, Presidential elections should be conducted in a fundamentally different *manner* (that it should be "of an entirely different flavour") as compared to Parliamentary elections.[329]

7.11 The purpose of the Presidential election is to confer on the successful candidate

[329] Oral representations of Rey Foo Jong Han (Transcripts for 22 April 2016 at p 31).

the legitimacy and mandate to stand up to an elected Government. The President plays no role in setting the national agenda nor does he make policy decisions as to the course that the nation should chart. Those are matters which properly fall within the remit of the elected Government. A Parliamentary election is a contest of ideas and policies, where candidates have to communicate their policies to the electorate and persuade voters as to the strengths of their own proposals as well as the weaknesses of those put forward by other candidates. This clash of ideas and policies makes for a lively but inevitably divisive contest. In contrast, candidates for Presidential elections have no policy agenda to advance. There is little, if any, need for the vigorous contest of ideas that takes place during a Parliamentary election. Presidential candidates should be required to conduct their campaigns with rectitude and dignity as befits the office and comports with the unifying role and purpose of the Presidency.

7.12 The Commission therefore considers that rules should be introduced to regulate campaigning methods, with a view to tempering the divisiveness of the election process and ensuring that campaigning remains consistent with the role of the President as a symbol of national unity and which preserves the dignity associated with the highest office in the land.

7.13 The Commission considers, for instance, that rules could be enacted, possibly under the Presidential Elections Act, to restrict or exclude acts that might inflame emotions, cause divisiveness or encourage invective. Such rules could also prescribe a "white list" of approved campaign methods, such as televised debates[330] or speeches. It is not clear to the Commission if the holding of rallies, for instance, is either necessary or helpful in this context.[331]

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330 One contributor highlighted how a televised debate is better than a political rally as, in the latter, it is basically a "one-way communication", while in the former, there is "quite a bit of two-way conversation going on": oral representations of Suppiah Dhanabalan (Transcripts for 6 May 2016 at p 17).

331 Some commentators have suggested that doing away with rallies could reduce the divisiveness of the process: Ho Kwon Ping & Janadas Devan, "The Presidential Election; Let electoral college choose the president", *The Straits Times* (3 September 2011).

Preventing misinformation

7.14 In the 2011 Presidential elections, some candidates promised to pursue particular policies if they were elected into office, despite such areas not being within the constitutional remit of the President's functions.[332] One commentator has observed that this was "disappointing, misleading and a great disservice to the electorate".[333] Prime Minister Lee also raised a similar point in his speech in Parliament on 27 January 2016, where he said:[334]

> In addition to exercising custodial powers, the President would also continue to be the Head of State. He has to be above politics. … By design, the President has no executive, policymaking role and this remains the prerogative of the elected Government commanding the majority in Parliament.
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> But in the last Presidential Election, many people did not understand this. … Regrettably, during the last Presidential Election, those who did not understand it included some candidates. They campaigned for President as if they were going to form an alternate Government. But the President is neither the Government nor is he the Opposition. He is a custodian, a goalkeeper. The Constitution gives him power to block certain actions of the Government, in areas which are specifically carved out for him. But it does not give him the power to initiate policies or generally to champion policies.
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> So, it is a very delicate balance. He is elected for a specific purpose. The purpose is specified in the Constitution, and we have to operate by the Constitution, both to be complying with the law and to make sure the system works. For the system to work, both candidates and voters have to understand this. Otherwise, if you have a President who thinks that he is the Government, competing with the Government, you have two power centres in the system. At the very least you have confusion, you could have an impasse between the two and the democratically elected Government will be undermined. …

7.15 Under the law as it presently stands, a person commits an offence if he:

> by… any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces or prevails upon any elector or voter either to vote or refrain from voting at any

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[332] As highlighted at ¶2.58 above, the custodial powers of the President are reactive in nature. He is not meant to pursue a policy agenda for the country, as a Prime Minister would.

[333] See S Jayakumar, *Be at the Table or Be on the Menu* (Straits Times Press, 2015) at p 110.

[334] *Singapore Parliamentary Debates, Official Report* (27 January 2016) vol 94 (Lee Hsien Loong, Prime Minister).

election… [335]

In the Commission's view, this is not directed at misinformation of the sort that has been referred to, which concerns the proper role of the President and the functions of his office. Rather, the provision is directed at wilful interference with free elections. The Commission considers that, to the extent candidates in the last Presidential elections appeared to misstate what they could or would do if elected, this may have stemmed from a failure to understand the proper remit of the Presidency and in particular, the tendency to see it, mistakenly, as an alternative source of Executive policy-making power.

7.16 To address this, the Commission proposes that laws be enacted, which:

a) Require candidates to explicitly declare that they understand the constitutional role of the President before they may be issued a CoE.[336] This could take the form of a statutory declaration contained within the application form for the CoE, which has been discussed at paragraphs 4.82–4.84 above.

b) Make it an offence for candidates to make promises or to take positions that are incompatible with the office of President. As an example, candidates who undertake to promote wider healthcare or better public transport or who pledge to oppose spending for such programs would be making promises that fall outside the remit of the Elected President's constitutional role, and would consequently be in breach of the proposed prohibition. As explained at paragraph 2.58 above, the role of the Elected President is a reactive one. Given the explicit undertaking in (a) above, it would be difficult for candidates to claim that any breach was borne out of ignorance.

c) Impose a regime of sanctions where a breach of election rules, including

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335 Section 40 of the Presidential Elections Act (Cap 240A, 2011 Rev Ed).

336 This was suggested by a number of contributors: written submissions of Rey Foo Jong Han; Suppiah Dhanabalan; Eric Lee Siew Pin.

> a breach of the prohibition in (b), could give rise to a range of possible consequences including criminal sanctions, applications to an Election Judge[337] for declaratory reliefs, and, in appropriate extreme cases, the revocation of a candidate's CoE.

Endorsements by political parties

7.17 A third concern relating to the campaign process which was raised pertains to the endorsement of Presidential candidates by political parties. During the Third Reading of the 1990 EP Bill in January 1991, then Prime Minister Goh Chok Tong remarked: [338]

> [The office of President] requires a man of political experience, and ability, to judge matters politically. If there is a good candidate, and the parties are going to campaign for him, I do not think we should disallow them from doing so. And because we now require him to delink his ties with his particular political party, he owes no obligation to whoever wants to campaign for him. But parties, like citizens, should be allowed to campaign for the Elected President.

7.18 Some contributors argued that such endorsements should be prohibited so as to prevent the election process from becoming politicised.[339] One contributor suggested that this prohibition should apply to Ministers and Members of Parliament, but not to rank-and-file members of political parties. He also suggested that the prohibition should apply regardless of whether the politician speaks in his personal capacity or in his capacity as a member of the Government.[340] The Commission does not agree with the imposition of any such prohibition. Political parties are likely to have strong and potentially relevant views on the merits or demerits of Presidential candidates. The presence of an endorsement by a political party might be a factor that voters might wish to consider in the exercise of their vote. The Commission also considers that it would not be feasible, in any case, to prevent endorsements by politicians speaking in their

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337 Under section 71 of the Presidential Elections Act (Cap 240A, 2011 Rev Ed).

338 *Singapore Parliamentary Debates, Official Report* (3 January 1991) vol 56 at col 750 (Goh Chok Tong, Prime Minister and Minister for Defence).

339 Written submissions of Asst Prof Jack Lee; Chua Jia Ying, Trinisha Ann Sunil, Rachel Koh Hui Fang & Manfred Lum Rui Loong; Bong Yuho; Benedict Chan Wei Qi.

340 Oral representations of Asst Prof Jack Lee (Transcripts for 26 April 2016 at p 114).

public, as opposed to personal, capacities, as it would be very difficult to distinguish between the two in practice.[340]

Transitional arrangements for the revised eligibility criteria

7.19 Some contributors suggested deferring the implementation of any proposed changes to the qualification criteria so as to prevent candidates who might previously have qualified to contest the Presidential office from being excluded from contesting the 2017 Presidential elections.[341] The Commission considers that the question of *whether and when* any amendments should be introduced is a political matter for Parliament to determine. The Commission's focus has been to address how the current eligibility criteria should be updated, taking into account changes in Singapore's situation that have occurred over the course of the last 25 years since the office of the Elected President was created. Moreover, the Commission observes that it would be incongruous for it to conclude that changes are called for to safeguard the nation's vital interests, but for it then also to propose, in the same report, that these be deferred for at least 7 years.

The provisions entrenching the Elected President's discretionary powers

7.20 The Constitution contains three provisions which safeguard against any curtailment or circumvention of the President's discretionary powers.

7.21 First, Article 5(2A) of the Constitution stipulates that any Bill proposing to amend certain core constitutional provisions cannot be passed in Parliament unless it has been supported at a national referendum by at least two-thirds of the votes cast (or unless the President acting in his discretion directs otherwise).[342] These core

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341 Written submissions of Assoc Prof Eugene Tan; Chan Kai Yan; Ravi Chandran Philemon.

342 The terms "core" and "non-core" were used by then Deputy Prime Minister Lee Hsien Loong at the Second Reading of the Constitution of the Republic of Singapore (Amendment) Bill (Bill No 24/94) on 25 August 1994: *Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at col 429 (Lee Hsien Loong, Deputy Prime Minister).

constitutional provisions are:[343]

a) Article 5(2A) itself, as well as Article 5A (explained below);

b) the provisions in Part IV of the Constitution, relating to fundamental liberties;

c) the provisions in Chapter 1 of Part V of the Constitution, relating to the office of President;

d) the jurisdiction of the Election Judge to hear proceedings relating to the election of the President;[344]

e) the powers of the President to prorogue Parliament[345] and call for Parliamentary elections;[346] and

f) any provision of the Constitution that authorises the President to act in his discretion.

In practical terms, Article 5(2A) grants the President an effective veto over any proposed amendment of these core provisions, which can only be overridden by Parliament if it acts with the support of two-thirds of the electorate voting at a national referendum.

7.22 Second, Article 5A of the Constitution gives the President the discretion to veto any Bill amending any constitutional provision other than the core provisions referred to in Article 5(2A) above (in other words, a non-core constitutional provision), if the amendment circumvents or curtails the discretionary powers conferred on the President by the Constitution.[347] If the President refuses his assent, the Bill may then be referred

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343 Article 5(2A) of the Constitution.
344 Article 93A of the Constitution.
345 Article 65 of the Constitution.
346 Article 66 of the Constitution.
347 The removal of entities from the Constitution's Fifth Schedule was cited as an example of an amendment to a non-core constitutional provision: *Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at col 430 (Lee Hsien Loong, Deputy Prime

to a Constitutional Tribunal composed of Supreme Court Judges to determine whether the proposed amendments in fact circumvent or curtail the President's discretionary powers.[348] If the Constitutional Tribunal finds that the amendments do *not* circumvent or curtail the President's powers, the President is deemed to have assented to the Bill.[349] If, however, the Constitutional Tribunal finds that the amendments *do* circumvent or curtail the President's discretion, the President's veto may only be overridden if it is supported by two-thirds of the votes cast by electors at a national referendum. The mechanism entrenching the President's discretion under non-core constitutional provisions is thus similar to that for core provisions referred to in Article 5(2A), with the following difference: for amendment of non-core constitutional provisions, the President's veto of the amendment would be final (and can only be overridden by a referendum) only *if and after* the Constitutional Tribunal of Supreme Court Judges determines that the amendment does in fact circumvent or curtail the President's discretion.

7.23 Third, Article 22H of the Constitution gives the President the discretion to veto any Bill amending any legislation *other than the Constitution* if the proposed amendments circumvent or curtail his discretionary powers. The President's refusal to assent to the amendment Bill also triggers the same reference procedure as provided for in Article 5A. Likewise, if the Constitutional Tribunal finds that the amendments do *not* circumvent or curtail the President's powers, the President is deemed to have assented to the Bill.[350] However, if the Constitutional Tribunal finds that the amendments *do* circumvent or curtail the President's discretion, the President's refusal to assent to the Bill is final and cannot be overridden, even if supported by a super-majority at a national referendum. When Article 22H was introduced, the absence of the possibility of an override by way of a national referendum was explained on the ground that "non-Constitutional legislation ... should never circumvent or curtail the President's

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Minister).

348 Article 100 of the Constitution governs the constitution of such a tribunal. Under Article 5A(2) of the Constitution, the President *has* to refer the matter to the Constitutional Tribunal if advised to do so by the Cabinet.

349 Article 5A(3) of the Constitution.

350 Article 22H(3) of the Constitution.

discretionary powers".[351]

7.24 Neither Article 5(2A) nor Article 5A are in force at present, even though the former was introduced together with the Elected Presidency in 1991,[352] and the latter introduced a few years thereafter. Parliament suspended the entry into force of these entrenching provisions so that constitutional amendments could be made to fine-tune the institution of the Elected Presidency without the hurdle of having to convene a national referendum each time such an amendment was proposed (though it should be noted that a referendum need not be convened if the President, in his discretion, waives the requirement for this). At the third reading of the 1990 EP Bill, then Prime Minister Mr Goh Chok Tong explained the reasons for delaying the entry into force of these entrenching provisions as follows:[353]

> The Select Committee has quite rightly said that we should give ourselves a grace period for making amendments in the light of actual implementation. Such amendments ought not be subject to the strict provisions of a referendum set out in [the] new Article 5(2A). Hence, [the] new Article 5(2A) should be brought into operation only after this period of adjustments and refinements. I agree with this comment. But the Select Committee was probably too optimistic in believing that a period of two years would be enough to iron out all the problems. I favour giving ourselves more time, to avoid having to go to referendum on procedural and technical provisions. I suggest we give ourselves ***at least four years*** for adjustments, modifications and refinements to be made [emphasis added].

A similar point was made in relation to Article 5A by then Deputy Prime Minister Lee Hsien Loong in 1994.[354]

7.25 Five years after that, during Parliamentary debates in August 1999, the need to suspend the entrenchment of the Presidency to allow for further fine-tuning was reiterated once again. In response to a query raised in Parliament on when the

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351 *Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at col 429 (Lee Hsien Loong, Deputy Prime Minister).

352 Article 5(2A) of the Constitution was also amended in 1996 by Constitutional (Amendment) Act 1996 (Act 41 of 1996).

353 *Singapore Parliamentary Debates, Official Report* (3 January 1991) vol 56 at col 722 (Goh Chok Tong, Prime Minister and Minister for Defence).

354 *Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at col 429 (Lee Hsien Loong, Deputy Prime Minister).

Government would entrench the institution of the Elected Presidency within the Constitution, then Prime Minister Goh Chok Tong said:[355]

> [W]hether we would entrench the Presidency in the Constitution, in terms of our inability to change the Article without his permission in the next term, I would not want to commit myself at this stage. I think it is better for us to work the system and be very satisfied that we have a good system before we entrench those powers in the Constitution. Otherwise, it is very difficult for us when we find that we should in fact do things in a different way to try to change the Constitution, because the President can block it. So I would rather err on the side of caution. I would say that we should try to entrench that within the next six years, but I would not want to commit myself at this moment.

7.26 Some contributors have called for Article 5(2A) and 5A to be brought into force.[356]

7.27 The Commission considers that there is force in the view that these provisions should not be left suspended indefinitely. After 25 years, the Government should decide whether to bring these provisions into force or repeal them in whole or in part. This, too, is ultimately a matter for political judgment. However the Commission considers that in weighing this option, certain considerations may be of particular importance.

7.28 The office of the Elected Presidency is unique – it is not an institution derived from one which exists in any other jurisdiction. Rather, it is an entirely indigenous creation designed to address the particular imperatives and vulnerabilities of our system of governance, against the backdrop of our own historical context. The introduction of such a significant change to our constitutional structure has seen a process of refinements and adjustments to the office over the course of the last 25 years; the Elected Presidency has evolved over the years and it continues to do so. Indeed, this Commission has been tasked to re-examine some very fundamental aspects of it,

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355 *Singapore Parliamentary Debates, Official Report* (17 August 1999) vol 70 at cols 2055–2056 (Goh Chok Tong, Prime Minister).

356 Written submissions of Jennifer Teo Zhi Hui, Rachel Lui Shu Hui, Yip Jian Yang & Choo Ian Ming; Renee Tan Ru Yan, Estella Low Yue Jia, Bryan Ching Yu Jin, Yeo Yong Jin & Walter Yeo Yeo En Fei; Roi Tan Yu Ming, Yeow Yuet Cheong, Kimberly Ho Jen Ni & Dominic Kwok Chong Xin; Cheryl Theng Hui Lin, Colin Wu Guolin, Loy Ern Tian & Ruelia Nesaranjini.

notwithstanding the fact that many amendments have already been made in the intervening period.

7.29 The entrenchment of these provisions after the present review could hamstring Singapore's ability to deal with unforeseen difficulties in the operation of the Presidential office in the future. If such difficulties were to arise, the entrenching provisions would, as a practical matter, make it virtually impossible to effect further amendments to the Constitution to remedy those difficulties. In this connection, the Commission notes that while the Legislature and the Judiciary do not hold the same symbolic role as the President, they nevertheless discharge constitutional functions that are of critical importance to the nation. Despite this, the role and place of these other institutions have not been entrenched by way of a similar referendum mechanism. This was despite the fact that the previous Constitutional Commission convened in 1966, headed by then Chief Justice Wee Chong Jin, proposed that the provisions guaranteeing the place of the Legislature and the Judiciary be entrenched.[357] This might support the contention that the entrenchment provisions protecting the office of the Elected President should be done away with altogether.

7.30 Ultimately, the Commission recognises that there are cogent arguments in support of either position, and it does not take a view on one or the other. But it does consider that indefinite suspension may not be appropriate. In the circumstances, if the Government is unwilling to commit to bringing the entire scope of the entrenchment provisions into force, but is also unwilling to repeal them at this time, the Commission suggests that the Government considers entrenching only those provisions in Part IV of the Constitution (relating to fundamental liberties). The Commission notes that the Constitutional Commission chaired by Chief Justice Wee Chong Jin had made a similar proposal, but this was not adopted.[358]

7.31 As for the other provisions affected by Articles 5(2A) and 5A, which deal with the office and powers of the President, the suspension of the entrenchment could then

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[357] *Report of the Constitutional Commission 1966* (27 August 1966) at ¶¶75–81.
[358] *Report of the Constitutional Commission 1966* (27 August 1966) at ¶81(*a*).

be extended for a *fixed* period of time, perhaps 5 years, after which they would be brought into force unless the suspension is expressly extended for further fixed periods by Parliament. This would allow the contours and the role of the office of President to continue to be fine-tuned, but with the assurance that there will be periodic reconsideration of the issue of entrenchment attended by the openness of Parliamentary debate.

Greater public education on the Elected Presidency

7.32 A widely-held view amongst contributors was the strong need for greater education on the role and powers of the Elected President.[359] This was often proposed as a means of countering the risk of the voting public being misled by candidates' grandiose promises into thinking that the President could do things which are not constitutionally permitted (see paragraph 7.14 above). One contributor referred to a 2011 IPS survey, where respondents were each posed with 11 statements on the President's roles, some true and some false, and asked to determine those which were true. The results indicated that only 42% of the respondents were able to correctly identify the proper ambit of the President's role (as referred to in the 11 statements).[360] Another contributor expressed the concern that many Singaporeans still laboured under the misimpression that the Elected President was an alternate centre of political power and that the President could change the direction of the policy stance of the Government.[361]

7.33 The Commission strongly endorses the proposal for there to be greater public education about the Elected Presidency. Such education should focus on the role and powers of the President, the functions of the CPA, the interactions between the President and the CPA, as well as the interplay of powers between the President and the

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[359] Written submissions of AWARE; Chia Hua Meng; Phua Thian Sung. Oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at pp 32–34).

[360] Oral representations of Dr Gillian Koh & Tan Min-Wei (Transcripts for 26 April 2016 at p 33); Debbie Soon, "Report on IPS Forum on the Presidential Election" <http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/04/Forum_Presidential-Election_01112011_report-1.pdf> (accessed 8 August 2016).

[361] Written submissions of Eric Lee Siew Pin.

Government. Such education should start in schools but should continue beyond that.[362]

7.34 The Elected President is a unique institution. It has been observed on many occasions that the President has *only* custodial powers and has no power to advance a policy agenda. This can lead some to downplay the role of the Elected President but the Commission considers that this would be a serious mistake. While it is true that the President has only custodial, rather than policy-making, powers, these are immensely important powers that have a real prospect of compromising the ability of an elected Government to function. The Commission views with grave concern the fact that elections to the office may have been contested without a correct understanding of the precise scope of the roles and responsibilities of the Presidency. This needs to be remedied.

Should the Presidency remain an elected office?

7.35 One pair of contributors submitted that after the experience of the last 25 years, the Elected Presidency should be abolished and Singapore should return to a system where the President is appointed by Parliament. They favoured confining the Presidency to its historical role and not vesting it with any custodial role.[363] They expressed the view that these were roles which called for persons with vastly different attributes ("different chemistry", as they put it in the course of their oral representations) and that, even though Singapore thus far has been fortunate to find persons equally adept at both those roles, there was no assurance that there will continue to be such individuals who are capable of discharging *both* the custodial and symbolic roles of the Presidency in the future.[364] Some also thought that having the President appointed by Parliament would be the way to ensure minority representation in the Presidential office.[365]

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362 Oral representations of Rey Foo Jong Han (Transcripts for 22 April 2016 at p 32).
363 Other than that pertaining to restraining orders under the MRHA.
364 Oral representations of Dr Loo Choon Yong & Loo Choon Hiaw (Transcripts for 6 May 2016 at p 86).
365 Written submissions of Dr Kevin Tan.

7.36 The Commission notes that this is a matter that falls clearly beyond the Terms of Reference. The choice of constitutional design and arrangements to achieve particular ends are quintessentially political questions. They should be left to the Legislature or, in extreme circumstances, the electorate voting in a referendum. Nonetheless, having undertaken the task of this review, the Commission has had the opportunity to pay close attention and give consideration to the strengths and the weaknesses of the Elected Presidency as well as to the related question of how any weaknesses could be overcome by an alternative design. The Commission sets out its views on these issues to provide some context for further debate on this issue, should that be thought desirable.

7.37 First, the Commission considers that it is *imperative* that there be a check and balance in place to safeguard the following two critical national assets:

a) the financial reserves; and

b) the integrity of the Public Service.

7.38 The financial reserves have been built and accumulated through the wisdom, acumen, ingenuity and efforts of Singapore's forerunners. It is the nation's patrimony and exists for the benefit of future generations to enable the nation to weather storms and to undertake worthwhile initiatives for the common good. Singapore is not blessed with *any* natural resource. There is nothing that can be mined from the soil to generate wealth, which can then be applied for the sake of progress and development. But Singapore does have substantial reserves that have been accumulated through careful stewardship. It is a matter of national security that these be safeguarded against irresponsible use.

7.39 This leads to the second of Singapore's key assets – the Public Service. It has been possible to generate and accumulate the reserves largely *because* of the quality and the integrity of the Public Service. From Singapore's earliest days as an independent nation, the Government has taken extensive steps to combat the scourge of corruption and the nation's character has come to be defined, among other things, by an utter intolerance for corruption. For these reasons, the Singapore Public Service is

consistently ranked among the least corrupt in the world and this is something which the world has come to admire and respect about Singapore.[366]

7.40 The Commission therefore regards it as a matter of existential importance that these assets be resolutely safeguarded. This is not to be taken for granted. Unchecked political processes have the potential to swiftly deplete our reserves, for example, if they are utilised to fund extravagant promises to the electorate. Similarly, the integrity of the Public Service would be compromised if senior appointments within the Public Service were made for nepotistic rather than meritocratic reasons.

7.41 These are the principal considerations that led to the establishment of the Elected Presidency on terms that the Executive would be split into two sub-branches, each independently elected but with one having the power to act and the second with the power to block, in certain circumstances, the intended actions of the former. Conceptually, this seems effective for the intended purpose of safeguarding these assets.

7.42 The Commission considers that *if* the President is to continue to perform these custodial functions, the office should remain an elected one. The reasons have already been canvassed above but two bear repeating. First, it would be incongruous to have a second key in the hands of the President, if the holder of the first key (namely, the Government) is to appoint the holder of the second key. Quite apart from whether such a person could or might *in fact* be an effective check on Parliament, the *perceived* lack of independence is problematic. Second, the President will likely require a popular mandate if he is to have the authority to act as the custodian of the nation's reserves and be an effective check against governmental action, should the occasion arise. An appointed President is unlikely to have the standing or authority to effectively block a decision made by a democratically elected government.

7.43 But after 25 years and amidst an evolving environment, the Commission notes

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366 See the work of Daniel Kaufman & Aart Kraay, *Worldwide Governance Indicator Project: Country Data Report for Singapore, 1996–2014* <http://info.worldbank.org/governance/wgi/pdf/c193.pdf> (accessed 8 August 2016).

the emergence of strains rooted in the unavoidable tension between the President's historical and custodial roles, which was alluded to at the beginning of this report.[367]. The former requires that he be non-partisan and a unifier of the nation, while the latter potentially requires him to confront the Government of the day – a task which is somewhat at odds with the role of a unifier. Furthermore, while the prospect for such confrontation necessitates that the President hold the legitimacy and authority that comes from having an elected mandate, it seems out of place for persons seeking a non-partisan unifying office to have to go through a national election, which will likely be politicised and divisive. The potential for contradiction is perhaps captured to some extent by the views which former Foreign Minister S Rajaratnam was reported to have expressed when President Wee Kim Wee, who is popularly described as "the People's President", ended his term in August 1993:[368]

> I cannot imagine him standing up at elections to plead a cause and you have Chiam See Tong and others challenging him. I would have dissuaded him. I would say, "lay off", because it would ruin him. An elected presidency would be unfair to him. Kim Wee is not a political personality. He is a personality. And he was a success. He was the People's President.

The transformation of the Presidency into an elected office occurred during Mr Wee's term as President but upon the expiration of his term, Mr Wee reportedly declined the invitation to run because he "could not reconcile himself with the need to campaign for votes".[369]

7.44 Ironically, the role of the Elected President as a "check" on the Government would seem to incentivise candidates to campaign on an anti-Government platform. This would be inconsistent with the unifying role of the President. In addition, it can also give rise to real difficulties in the day-to-day business of governance. Among the

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367 At ¶2.60.

368 Bertha Henson, "The President who put people before pomp and protocol" *The Straits Times* (31 August 1993) at p 13. It was Mr Rajaratnam who had proposed Mr Wee Kim Wee as President, when the Presidency was still an appointed office: see *Singapore Parliamentary Debates, Official Report* (31 August 1993) vol 61 at col 525 (Goh Chok Tong, Prime Minister).

369 *Singapore Parliamentary Debates, Official Report* (31 August 1993) vol 61 at col 528 (Goh Chok Tong, Prime Minister).

vital contributors to Singapore's success and its ability to generate and accumulate substantial reserves has been the ability of the Government to function pragmatically and plan for the long-term good of the nation; this necessitates that it be willing and able to bear the political cost of making hard choices that are essential. The Commission has concerns that the making of these choices engages the very issues that a politicised President who campaigns on a platform to oppose the Government of the day, could clash with the Government over.

7.45 The Commission also considers that whereas the symbolic role demands certain traits (largely resting on the ability to connect with and represent the general populace), these may not always, or even usually, be found in individuals who also possess the financial qualifications and technical competencies required for the exercise of the President's custodial powers.

7.46 Contributors alluded to the difficulty of finding a single person who could fulfil the Elected President's job description, given the competing qualities required of the President.[370] The same contributors proposed "unbundling" the President's symbolic and custodial roles and assigning them to two different institutions. The important custodial role should be largely preserved but vested in a council of highly-qualified experts. The President would retain his symbolic and ceremonial role of the Head of State, as it had been at independence, and hold an appointed office. Parliament would abide by the convention of rotating the office among the different ethnic groups.

7.47 The Commission considers that this is a proposal that the Government may wish to consider if and when it is appropriate and timely to undertake a more fundamental change to the Presidency.

7.48 The Commission suggests that the unbundling of the President's custodial role and its devolution to a specialist body could be operationalized in the following fashion. The custodial function over the nation's fiscal reserves and key public service

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[370] Oral representations of Dr Loo Choon Yong & Loo Choon Hiaw (Transcripts for 6 May 2016 at p 86). Oral representations of Assoc Prof Eugene Tan (Transcripts for 18 April 2016 at p 21).

appointments could be vested in an appointed body of experts. The Commission conceptualises such a council of experts as a second chamber of Parliament with the ability to delay measures, force a debate upon them and require the Government to override any objections only with a super-majority. Hence, unlike the Elected President, the council, as an appointed body of experts, would never have the power to absolutely veto or block Government initiatives (as the Elected President presently does when he has the support of the CPA). But through a combination of raising the issue, forcing a debate on the council's objections and requiring a super-majority, a suitable balance could be struck between the need to safeguard our critical assets on the one hand, and, on the other hand, enabling the Government to act.[371]

7.49 In this respect, the Commission finds some guidance from the Westminster system, where the House of Lords (which primarily comprises appointed, as opposed to elected, members) has the power to delay, but not to block, the vast majority of bills passed by the House of Commons. Indeed, the Commission notes that second chambers with mainly appointed (as opposed to elected) members are not uncommon. Other examples include the Rajya Sabha in India, and the Dewan Negara in Malaysia. The US Federal Reserve Board also serves as an example of an appointed body of experts that is tasked to function independently and with the authority to make systemic financial decisions that have global ramifications (although the Commission notes that the Federal Reserve Board model was explicitly considered as an option by the First White Paper but ultimately not pursued).[372]

7.50 The question might be asked whether such a role could equally be played by an appointed President. The Commission considers that it is a matter of paramount importance that the holder of the second key be, and be manifestly seen to be, independent of the holder of the first key. As long as the President is appointed by

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[371] The contributors who suggested devolving the President's custodial role to a council of highly-qualified experts explained that this proposed council's role was to blow the whistle on and delay the relevant Government proposal. The council could be overridden by a super-majority in Parliament but by then, the "whole world would know": oral representations of Dr Loo Choon Yong & Loo Choon Hiaw (Transcripts for 6 May 2016 at p 76).

[372] First White Paper at ¶12.

Parliament, this essential requirement would not be met. In contrast, an appointed council of experts could focus on the technical aspects of the custodial role without being distracted by political issues or worry about having to be elected. The key consideration will be to ensure that this body, though it consists of appointed members, in fact functions independently and has the requisite expertise to carry out its supervisory functions. To this end, its members should be subject to stringent eligibility criteria along the lines of those currently applicable to Presidential candidates.

7.51 To secure the independence of such a council, it will be necessary to devise the appointments process with care. For illustration only, the appointers could comprise a diverse range of key public servants, including those who currently appoint members of the CPA, namely, the Prime Minister, the Chief Justice and the Chairman, PSC, as well as representatives from industry and other interest groups and possibly a cross-party Parliamentary select committee. Nominations to the appointed body could be staggered as has been proposed above in relation to the CPA (see paragraph 6.30 above) to further enhance the council's independence and ensure continuity in its work.

7.52 With the appointed body taking over the Elected President's custodial role, the President can then focus on his historical role of being a symbolic unifying figure. He would retain his historical functions (such as, the appointment of a Prime Minister) and possibly also the protective functions (see paragraph 3.10 above). He would be a distinguished citizen of Singapore and be appointed by Parliament to serve with distinction.

7.53 The Commission has set out its thoughts on this issue only for the Government's consideration and, if the Government deems it fit and profitable, further debate. The Commission does so only as a group of citizens which has had the privilege and the duty of undertaking an extensive study in the history, the purpose and the position that the President occupies in Singapore's unique constitutional scheme.

CHAPTER 8

SUMMARY OF CONCLUSIONS

8.1 For ease of reference, the Commission sets out in summary fashion the recommendations it has made above. As noted at paragraph 1.9 above, this summary should be read together with the substantive discussion that is set out in the previous chapters.

Eligibility criteria for Presidential candidates

8.2 In order to qualify for election as President, applicants will have to satisfy the criteria listed in Article 19(2) of the Constitution. Apart from the formal requirements as to citizenship, age, residency and others, applicants also need to have held a qualifying office. The qualifying offices are listed in Article 19(2)(*g*) of the Constitution and they may be divided into two broad categories: the "automatic" and the "deliberative" tracks.

8.3 Under the "automatic" track, applicants may qualify through one of three routes.

a) First, limb (i) of Article 19(2)(*g*) allows an applicant to qualify by virtue of him having held high public office. In respect of this route, the Commission proposes no changes to the list of qualifying offices, save for the removal of the offices of Auditor-General and Accountant-General from the list of public offices falling within the ambit of this section.

b) Second, limb (ii) of Article 19(2)(*g*) allows an applicant to qualify on the basis that he has helmed a Fifth Schedule statutory board. The Commission proposes that limb (ii) should be amended so that:

   i) only an applicant who has held the most senior executive position in the statutory board may qualify as a Presidential

candidate; and

ii) the quantitative threshold proposed by the Commission for private-sector companies under limb (iii) of Article 19(2)(*g*), if accepted, ought also to be adopted as the threshold for the inclusion of an entity onto the Fifth Schedule.

c) Third, limb (iii) of Article 19(2)(*g*) allows an applicant to qualify on the basis that he has helmed a company of requisite size or complexity. The Commission proposes changes to the requirements pertaining to both the nature of the company and the position that the applicant must occupy within the company, as follows:

i) In respect of the company, the Commission proposes that:

- A company must be one which has at least $500 million in shareholders' equity. The value of the company's shareholders' equity should be the average value recorded in the 3 years immediately preceding the date the applicant stepped down from the qualifying office, or if he is still in that office when he applies for the CoE, on Nomination Day for the Presidential election in question.
- The numerical threshold of $500 million should be reviewed periodically to adjust for changes in the economic environment.

ii) In respect of the position within the company, the Commission proposes that:

- An applicant should have held "the most senior executive position in the company, however that may be titled".
- The company must have recorded a net profit during the applicant's tenure, and it must not have gone into liquidation or entered into any other type of insolvency process (such as judicial management) within 3 years of the applicant ceasing to be a holder of that office, or on

Nomination Day for the Presidential election in question, whichever is the earlier.

8.4 Under the "deliberative" track, applicants may seek qualification under limb (iv) of Article 19(2)(*g*). This limb qualifies applicants who have held a "similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity". The Commission proposes that limb (iv) should be amended to explicitly require the PEC to take the performance of the relevant entity into consideration. Furthermore, the policy intent underlying limb (iv) of Article 19(2)(*g*) in its application to candidates from the public sector should be clarified, as noted at paragraph 4.69 above.

8.5 The Commission further proposes that the requisite tenure for which the applicant must have held the qualifying office under the automatic track in limbs (i) to (iii) of Article 19(2)(g) be increased from 3 to 6 years. The time spent in multiple qualifying offices may be aggregated for purposes of determining if the requisite tenure has been met, subject to the proviso that time spent in private-sector qualifying offices cannot be aggregated with that in public-sector qualifying offices, and *vice versa*. For applicants applying under the deliberative track in limb (iv), the tenure served within the qualifying office should be of a comparable duration but the requisite number of years need not be expressly stipulated in the Constitution, to accord the PEC greater flexibility in its deliberations. Nevertheless, while the 6-year requirement may not strictly apply to the deliberative track, the PEC ought to assess the applicant's performance over a sustained period of time, to determine whether the applicant's tenure in the office concerned has in fact conferred the requisite experience and expertise comparable to that which would have been gained from a 6-year stint in any of the qualifying offices under the automatic track.

8.6 Further, an applicant's entire qualifying tenure in a qualifying office, whether under the automatic track or the deliberative track, should have been spent in the 15 years immediately preceding Nomination Day for the Presidential election in question.

8.7 The Commission also proposes that applicants be required to provide more

information to the PEC, in the application form for a CoE, than is presently specified in the relevant regulations. A sample of the proposed revised application form may be found at **Annex D**. The PEC should also be empowered to seek further information from applicants, over and above that which is mandated in the application form. All information provided to the PEC should be provided under oath or on affirmation.

8.8 In the event that an applicant is successful in his application for a CoE, his application form and any other additional information furnished to the PEC by way of statutory declaration should be made available to the public for scrutiny. The PEC should also be empowered to revoke a CoE if the applicant is at any time found to have made any material false declarations in the application for the CoE. Any such determination by the PEC directed at an incumbent President should be open to challenge by the President before a Constitutional Tribunal. The remit of the Constitutional Tribunal should be expanded for this purpose.

8.9 Acceptance of these proposals will result in greater responsibility falling on the PEC. On this basis, the Commission proposes the addition of three members to the PEC to strengthen it and aid its decision-making. Specifically, the Commission proposes that:

a) the first additional member be a legal expert nominated by the Chief Justice (this member could be a retired judge of the Supreme Court);
b) the second additional member be a past or current member of the CPA nominated by the Chairman of the CPA; and
c) the third additional member be a private-sector nominee nominated by the Prime Minister.

8.10 The Commission also proposes that there be legislative amendments enabling the PEC to decide on issues based on a simple majority, with the Chairman of the PEC exercising a casting vote in the event of a tie.

8.11 The Commission also proposes that the timing at which persons may apply for a CoE should be such as to allow the PEC adequate opportunity to undertake the necessary checks and arrive at a determination of whether an applicant is eligible to

contest the elections.

8.12 The Commission proposes that to ensure a fair process and instil greater accountability, where the PEC refuses to grant any applicant a CoE, the PEC should make known to that applicant its reasons for refusal. The applicant would then be free to make those reasons public if he wished to do so.

Election of minorities to the office of President

8.13 The Commission considers that there is strong justification for introducing safeguards to ensure that the Presidential office is not only accessible, but is seen to be accessible to persons from all the major racial communities in Singapore. In line with the system for group representation constituencies in Parliamentary elections set out in Article 39A of the Constitution, the relevant racial communities may be categorised as follows:

a) Chinese,
b) Malay, and
c) Indian or other.

8.14 The Commission proposes that when a member from any racial group has not occupied the President's office for 5 continuous terms, the next Presidential elections should be reserved for candidates from that group. In the event that no suitable candidate from that group emerges, that election would then be opened to candidates of all races. The reserved election would then be deferred to the next Presidential election, and the practice of holding a reserved election will continue until a candidate from the racial group for which a reserved election had been convened is elected into Presidential office. Provisions should also be made to cater for the situation where more than one racial group is eligible for reserved elections at a given point in time. This is a situation which should be recognised and catered for by prioritizing among the groups that have not been represented in the Presidency.

8.15 The Commission considers that the eligibility criteria for Presidential candidates should not be lowered under any circumstances in order to accommodate candidates

from any given racial group.

The role and composition of the CPA

8.16 The legal relationship between the President and the CPA may be usefully analysed in terms of the following three broad scenarios:

a) where the President is obliged to consult the CPA, and his refusal to follow the CPA's advice opens the possibility of a Parliamentary override;

b) where the President is obliged to consult the CPA, but his refusal to follow the CPA's advice does not open the possibility for Parliament to override his decision; and

c) where the President is not obliged to consult the CPA.

The Commission considers that there is little apparent basis for distinguishing between the scenarios which presently fall within (a) and those which fall within (b). The Commission therefore proposes that the system be simplified. The President should be required to consult the CPA before exercising his discretion in respect of *all* fiscal matters touching on Singapore's reserves and *all* public service appointments. The Commission also proposes that in each of these cases, the President's decision should be subject to Parliamentary override where he acts against the CPA's advice.

8.17 The Commission considers that the President should not be required to consult the CPA in the exercise of his protective functions or in the exercise of his historical discretionary powers. Further, the exercise of these powers should not be subject to a Parliamentary override.

8.18 The Commission proposes that where a Parliamentary override is possible, the requisite Parliamentary majority needed to override the President's decision should be calibrated against the degree of support the President has from the CPA. Specifically:

a) Where the President acts with the support of an *absolute majority* of the

CPA, Parliament should not be able to override the President's decision.

b) Where the CPA is evenly split and the Chairman of the CPA exercises his casting his vote in the President's favour, Parliament may override the President's decision, but only with a two-thirds majority.

c) Where the President acts against the advice of the majority of the members of the CPA, Parliament should be able to override the President's decision with a simple majority.

8.19 The Commission further proposes that the CPA's size and structure be augmented. Two additional members should be added, with one appointed by the President and the other by the Prime Minister. Members of the CPA should be appointed for fixed terms of 6 years (whether it be a first appointment or a re-appointment) and their appointments should be staggered to ensure continuity and stability. Appointments should be made biennially, with the President and the Prime Minister (and either the Chief Justice or the Chairman, PSC, as the case might be) taking turns to appoint members to the CPA. Transitional arrangements may need to be implemented in respect of the current terms of the incumbent CPA members to give effect to the intent of the proposed staggering mechanism. Further, to preserve the staggering of the terms, if any CPA member vacates his office before the expiration of the term for which he was appointed, his successor should be appointed in the first instance for the duration of the remainder of the departing member's term instead of the full 6 years.

8.20 The Constitution should also set out broad principles that would guide the appointment of CPA members. In this regard, the appointees should have regard to the following requirements:

a) CPA members must be persons of "integrity, good character and reputation";

b) they should possess relevant expertise that will inform the exercise of the President's powers; and

c) appointments should be made with the objective of adding to the CPA's diversity of experience as a collective body.

8.21 The Commission proposes that in order to increase accountability, the CPA should be required to disclose to the President the votes of each individual CPA member and the grounds for the CPA's advice (including dissenting views). The Commission proposes that this should apply in all situations where the President is *required* to consult the CPA and his failure to act in accordance with the CPA's advice paves the way for a Parliamentary override. The Commission further proposes that the President should convey the CPA's position to the Prime Minister and the Speaker of Parliament in all cases where the President exercises his veto against the Government's position, but not where he assents to the Government's position. The Commission also proposes that the President be obliged to publish his opinion in all cases where he vetoes the Government's proposed action, if the veto can be overridden by Parliament.

8.22 Finally, the Commission proposes that in all situations where the President fails to signify his concurrence with a proposal or his agreement to perform a required task and also fails to signify any refusal to concur with the proposal or perform the task, where such refusal can be subject to a Parliamentary override, he should be deemed to have concurred with the proposal or performed the task after a lapse of 6 weeks.

Other matters

8.23 The Commission has also set out its views on various other matters raised by contributors which, though not falling within the Commission's terms of reference, merited consideration and discussion.

SUNDARESH MENON
Chairman

TAY YONG KWANG
Member

EDDIE TEO
Member

ABDULLAH TARMUGI
Member

CHAN HENG CHEE
Member

CHUA THIAN POH
Member

PHILIP NG CHEE TAT
Member

PETER SEAH LIM HUAT
Member

WONG NGIT LIONG
Member

CHRISTOPHER TAN PHENG WEE
Secretary

17 August 2016.

ANNEX A: LIST OF CONTRIBUTORS

Contributors who made oral representations

	Contributor	Date of receipt of written submissions	Date of oral representations
1.	Assoc Prof Eugene K B Tan	21 March 2016[1]	18 April 2016
2.	Brian Chang Tse De	16 March 2016	
3.	Edwin Yeo Tee Yeok	19 February 2016	
4.	Dr Mathew Mathews	20 March 2016	
5.	Loke Hoe Yeong	16 March 2016	
6.	AWARE[2]	21 March 2016	
7.	The Eurasian Association[3]	18 March 2016	22 April 2016
8.	Rey Foo Jong Han	18 March 2016	
9.	Students from Singapore Management University School of Law:[4] - Alexander Kamsany Lee - Ko Yuen Hyung - Mohamed Arshad bin Mohamed Tahir - Mok Zi Cong	21 March 2016	
10.	Ronald Wong Jian Jie	11 March 2016	
11.	Ranvir Kumar Singh	21 March 2016	

1 Revised by correction note sent on 15 April 2016.
2 Oral representations presented by Corinna Lim & Jolene Tan.
3 Oral representations presented by Benett Theseira. Also present on behalf of the Eurasian Association were Dr Alexius Pereira, Martin Marini & Timothy de Souza.
4 Oral representations presented by Alexander Kamsany Lee & Mok Zi Cong. Also present were Ko Yuen Hyung & Mohamed Arshad bin Mohamed Tahir.

	Contributor	Date of receipt of written submissions	Date of oral representations
12.	Dr Gillian Koh; Tan Min-Wei	21 March 2016[5]	26 April 2016
13.	MARUAH[6]	20 March 2016	
14.	Dr Jaclyn L Neo; Asst Prof Swati S Jhaveri	21 March 2016	
15.	Asst Prof Jack Tsen-Ta Lee	21 March 2016[7]	
16.	Suppiah Dhanabalan	21 March 2016	6 May 2016
17.	Dr Kevin Y L Tan	19 March 2016	
18.	Dr Loo Choon Yong; Loo Choon Hiaw	21 March 2016[8]	
19.	Students from the National University of Singapore Faculty of Law:[9] - Grace Teo Pei Rong - Carina Kam Zhi Qi - Amelia Chew Sihui - Russell Wong Yung	9 March 2016[10]	

5 Revised by clarification note sent on 19 April 2016.
6 Oral representations presented by Braema Mathi & Ngiam Shih Tung.
7 Revised by correction sent on 7 April 2016.
8 Revised by addendum sent on 28 April 2016.
9 Oral representations presented by Grace Teo Pei Rong & Carina Kam Zhi Qi. Also present was Carina Kam Zhi Qi.
10 Augmented by elaboration note sent on 5 May 2016.

Contributors who tendered written submissions

	Contributor	Date of receipt of written submissions
20.	Harry Pereira	19 February 2016
21.	Ramayah Renganathan	
22.	Edmund Lin	20 February 2016
23.	Chee Kok Kheong	21 February 2016
24.	Manoj J	
25.	Naganatha Pillay	22 February 2016
26.	Chong Yao Yang	23 February 2016
27.	Lin Ping Hoe	
28.	Wang XinBin	
29.	Jeremy Ang	24 February 2016
30.	Lee Jun Feng	25 February 2016
31.	Suraj P Upadiah	
32.	Alan Lim Eng Cheng	26 February 2016
33.	Chan Kai Yan	29 February 2016
34.	Tan Wui-Hua	3 March 2016
35.	Tay Kheng Soon	5 March 2016
36.	Tan Ying San	6 March 2016
37.	Chua Jia Ying, Trinisha Ann Sunil, Rachel Koh Hui Fang and Manfred Lum Rui Loong	8 March 2016
38.	Foong Swee Fong	
39.	Jennifer Teo Zhi Hui, Rachael Lui Shu Hui, Yip Jian Yang and Choo Ian Ming	
40.	Joshua Hiew, Samyata Ravindran, Kyle Yew and Sanjev Gunasekaran	
41.	Khoo Meng Kuan[11]	
42.	Low S K	
43.	Renee Tan Ru Yan, Estella Low Yue Jia, Bryan Ching Yu Jin, Yeo Yong Jin and Walter Yeo En Fei	
44.	Roi Tan Yu Ming, Yeow Yuet Cheong, Kimberly Ho Jen Ni and Dominic Kwok Chong Xin	
45.	Wee-How	
46.	Wong Chee Wah	
47.	Chong Shi Cheng, Samuel Chew Tongjun, Joseph Gwee Ming Wei and Liu Jisheng	9 March 2016
48.	Pearl Tan Lei Lei	

[11] Addendum sent on 9 March 2016.

	Contributor	Date of receipt of written submissions
49.	Bernard Neo Bee Sian	10 March 2016
50.	Dalip Singh	
51.	George Ow	
52.	Janet Low Wai Choo	
53.	Sia Yong Meng	
54.	Tang WeeLip	
55.	Kok Pak Chow	11 March 2016
56.	Bong Yuho	12 March 2016
57.	Jay Soh	
58.	Lim Gin Mia	
59.	Ang Seng Chuan	13 March 2016
60.	Wang Swee Chuang	14 March 2016
61.	Lee Chiu San	15 March 2016
62.	Loke C T	
63.	Robin Chua Choon Howe	
64.	Shriniwas Rai	
65.	Chua Jun Yan	16 March 2016
66.	Lee Chin Wee	
67.	Rabin Kok	17 March 2016
68.	S Nallakaruppan	
69.	Bin Khee Man	18 March 2016
70.	Cheah Kok Keong	
71.	Cheryl Theng Hui Lin, Colin Wu Guolin, Loy Ern Tian and Ruelia Nesaranjini	
72.	Chia Hua Meng	
73.	Don Emmanuel Maurice Rosairo de Vaz	
74.	John Liau Wee Chye	
75.	Ong Poh Seng	
76.	Phua Thian Sung	
77.	Ng Thio Ping	19 March 2016
78.	Robert Tan Chian Sian	
79.	Tan Dingxiang	
80.	Wong Way Weng	
81.	Cheah Wui Ling	20 March 2016
82.	David Chiarucci Lee	
83.	Goh Mia Chun	
84.	Michael Poh Cheng Hock	
85.	Ronald Lim Hock Chuan	
86.	Subramaniam Visvalingam	
87.	Wesley Chioh	

	Contributor	Date of receipt of written submissions
88.	Alex Tan Tiong Hee	21 March 2016
89.	Alwyn Loy Suan Mao	
90.	Arun Ravindran, Matthew Chong Yong Jie, Lee Pei Pei, Ng Hui Min, Sarah Frances and Wong Jing Hao	
91.	Benedict Chan Wei Qi	
92.	Benjamin Joshua Ong	
93.	Chong Ja Ian	
94.	Chui Jian Wei	
95.	Eric Lee Siew Pin	
96.	Michael Heng Swee Hai	
97.	People's Power Party	
98.	Philip Teo Chwee Lock	
99.	Ravi Chandran Philemon	
100.	Tan Guan Hiang	
101.	Teo Hoong Chen	
102.	Workers' Party[12]	
103.	**4** contributors wished to remain private. **1** contributor's written submission was excluded on account of it being scandalous and defamatory.	
104.		
105.		
106.		
107.		

[12] Contributor declined the invitation to give oral representations.

ANNEX B: GLOSSARY OF TERMS

Term	Definition
1963 Federation of Malaysia Constitution	This was the constitution of the newly-formed Federation of Malaysia, as it was re-named in 1963. It provided that the Yang di-Pertuan Agong of Malaya became the Head of State of the new Federation.
1963 State of Singapore Constitution	This constitution governed the legal affairs of the State of Singapore while it was part of Malaysia. Article 1(1) provided that there would be a Yang di-Pertuan Negara of the State of Singapore, who shall be appointed by the Yang di-Pertuan Agong.
1990 EP Bill	This Bill set out the amendments to the Constitution necessary for the creation of the Elected Presidency. It was first read in Parliament on 30 August 1990.
1990 Select Committee Report	This was a report produced by the Parliamentary Select Committee tasked with studying the 1990 EP Bill.
ACRA	Accounting and Corporate Regulatory Authority.
CEO	Chief Executive Officer.
CERD	The Committee for the Elimination of Racial Discrimination, set up under the auspices of the ICERD.
Chairman, PSC	The Chairman of the Public Service Commission.
CoE	The certificate of eligibility granted under section 8(1) of the Presidential Elections Act (Cap 240A).
CPA	Council of Presidential Advisors.
CPF	Central Provident Fund.
CPIB	Corrupt Practices Investigation Bureau.

Term	Definition
Fifth Schedule entities	These are the entities which are listed in the Fifth Schedule to the Constitution. They comprise (a) statutory boards which are listed in Part I of the Fifth Schedule and (b) government companies which are listed in Part II.
Fifth Schedule statutory board	The statutory boards listed in Part I of the Fifth Schedule to the Constitution.
First White Paper	The first White Paper on the Elected Presidency. It was tabled in Parliament on 29 July 1988.
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination.
IPS	Institute of Policy Studies.
ISA	Internal Security Act (Cap 143).
MRHA	Maintenance of Religious Harmony Act (Cap 167A).
PCMR	Presidential Council for Minority Rights.
PEC	Presidential Elections Committee.
Prime Minister Lee	Prime Minister Lee Hsien Loong.
Qualifying offices	The offices specified in Article 19(2)(*g*) of the Constitution, the holding of which would entitle an applicant (provided he satisfies the other requirements in Article 19(2)) to run for election as President.
Reserves Committee	The Presidential Committee for the Protection of Reserves, proposed by the First White Paper.
Second White Paper	The second White Paper on the Elected Presidency, which was presented in Parliament on 27 August 1990.
Select Committee	The Parliamentary select committee appointed on 5 October 1990 to examine the 1990 EP Bill. The Select Committee invited and received both written and oral representations. It presented its report to Parliament on 18 December 1990.

Term	Definition
Terms of Reference	The terms of reference of the Constitutional Commission 2016.
The Commission	The Constitutional Commission 2016.

ANNEX C: ARTICLE 19(2) OF THE CONSTITUTION

(2) A person shall be qualified to be elected as President if he —

(*a*) is a citizen of Singapore;

(*b*) is not less than 45 years of age;

(*c*) possesses the qualifications specified in Article 44(2)(c) and (d);

(*d*) is not subject to any of the disqualifications specified in Article 45;

(*e*) satisfies the Presidential Elections Committee that he is a person of integrity, good character and reputation;

(*f*) is not a member of any political party on the date of his nomination for election; and

(*g*) has for a period of not less than 3 years held office —

(i) as Minister, Chief Justice, Speaker, Attorney-General, Chairman of the Public Service Commission, Auditor-General, Accountant-General or Permanent Secretary;

(ii) as chairman or chief executive officer of a statutory board to which Article 22A applies;

(iii) as chairman of the board of directors or chief executive officer of a company incorporated or registered under the Companies Act (Cap. 50) with a paid-up capital of at least $100 million or its equivalent in foreign currency; or

(iv) in any other similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector which, in the opinion of the Presidential Elections Committee,

has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President.

ANNEX D: SAMPLE CoE APPLICATION FORM

<table>
<tr><th colspan="5">(A) <u>Basic Information About the Applicant</u></th></tr>
<tr><td>Name:</td><td colspan="4"></td></tr>
<tr><td>NRIC No.: ^</td><td colspan="3"></td><td rowspan="3">Should this form subsequently be disclosed to the public by the Presidential Elections Committee, details in fields marked with a “^” will be redacted.</td></tr>
<tr><td>Address: ^</td><td colspan="3"></td></tr>
<tr><td>Contact number: ^</td><td colspan="3"></td></tr>
<tr><td>Present organization in which you are working:</td><td colspan="4"></td></tr>
<tr><td rowspan="4">Please indicate the limb(s) of Article 19(2)(g) under which you seek eligibility to run for President:</td><td>Article 19(2)(g)(i)</td><td>Yes / No *</td><td colspan="2" rowspan="4">Article 19(2) of the Constitution is reproduced in the annexure to this form.</td></tr>
<tr><td>Article 19(2)(g)(ii)</td><td>Yes / No *</td></tr>
<tr><td>Article 19(2)(g)(iii)</td><td>Yes / No *</td></tr>
<tr><td>Article 19(2)(g)(iv)</td><td>Yes / No *</td></tr>
</table>

(B) Character, Integrity & Reputation:

Have you ever been convicted of any offence by a court of law in Singapore or elsewhere?	Yes / No *

[*If the answer to the previous question is "yes"*]
Please provide full particulars of each offence, as per the fields below:

	Nature of offence	Conviction date	Court	Pardon (if any) and date thereof
1.				
2.				
3.				

Have you ever been the subject of a bankruptcy order?	Yes / No *

[*If the answer to the previous question is "yes"*]
Please provide full particulars of each order, as per the fields below:

	Date of order	Court	Date of discharge (if any)
1.			
2.			

Have you ever been subject to any form of disciplinary proceedings, whether in Singapore or elsewhere, in which you were found guilty of any breach or misconduct? [*This would include, for example, disciplinary proceedings by professional bodies (if you are a professional), market regulators (if you operate in the financial markets), associations, societies and clubs*]	Yes / No *

[*If the answer to the previous question is "yes"*]
Please provide full particulars of each disciplinary proceeding, as per the fields below:

	Disciplinary forum	Date of proceedings	Charge	Outcome
1.				
2.				
3.				

Have you ever been a party to any legal proceedings, including civil lawsuits and applications for injunction-type remedies (including personal protection orders for family violence), whether in Singapore or elsewhere?	Yes / No *

[*If the answer to the previous question is "yes"*]
Please provide full particulars of each legal proceeding, as per the fields below:

	Nature of proceeding (including parties involved; remedies claimed)	Date of proceedings	Court	Whether the proceedings are still pending and, if not, the outcome
1.				
2.				
3.				
4.				

Please provide the names and details of 3 character referees (who should not be immediate relations).
[*Reference letters should clearly state the contact details of the referee and be signed, placed in sealed envelopes and enclosed with this form*]

	Name of referee	Occupation	Period of acquaintance	Nature of acquaintance
1.				
2.				
3.				

(C) Qualifying Office(s)

For each office which the applicant is relying on to establish eligibility under Article 19(2)(*g*) ("**Qualifying Office**"), please provide the following information:

[*The following fields are applicable only to Qualifying Offices falling under Article 19(2)(g)**(i)***]
Please provide the name of the office(s) and the duration for which the office was held:

	Qualifying Office	**Tenure**
Qualifying Office 1		
Qualifying Office 2		
Qualifying Office 3		

[*The following fields are applicable to Qualifying Offices **OTHER THAN** those under Article 19(2)(g)**(i)***]
Please provide the following details for each Qualifying Office that you held:

	Qualifying Office		**Tenure**
Qualifying Office 1	Name of the organisation in which the Qualifying Office was held ("**Relevant Organisation**") and its registration details:		
	Description of the Relevant Organisation's business:		
	Names of the Relevant Organisation's Board members during the period when you held the Qualifying Office:		

	[*This field is applicable to all <u>private</u>-sector Relevant Organisations*] Please provide the Relevant Organisation's **shareholders' equity** for *<u>each</u>* of the 3 consecutive financial years ending immediately prior to either the point at which you stepped down from the Qualifying Office or, if you still hold the Qualifying Office, Nomination Day: [*Please also enclose the financial statements (i.e. profit & loss statements and balance sheets) for the 3 consecutive financial years ending immediately prior to either the point at which you stepped down from the Qualifying Office or, if you still hold the Qualifying Office, Nomination Day*]		
	[*This field is applicable to <u>private</u>-sector Relevant Organisations under Article 19(2)(g)**(iv)***] Please provide the Relevant Organisation's • Paid-up capital; • Issued capital; • Total assets; • Revenue (on *both* an entity and a group basis); • Headcount (on *both* an entity and a group basis); and • any other financial information which the applicant deems relevant, for *<u>each</u>* of the 3 consecutive financial years ending immediately prior to either the point at which you stepped down from the Qualifying Office or, if you still hold the Qualifying Office, Nomination Day: Please also list the Relevant Organisation's related corporations:		

	[*This field is applicable to all Relevant Organisations under Article 19(2)(g)**(iv)***] Please explain why the Relevant Organisation should be considered as being of equivalent size or complexity as organisations falling under limbs (i), (ii) or (iii) of Article 19(2)(*g*):		
	Please state what your job title was when you held the Qualifying Office:		
	Please provide a detailed description of your roles and responsibilities in the Qualifying Office: [*Please also enclose:* • *A statement endorsed by the Relevant Organisation's board of directors or other equivalent governing body setting out:* – *A description of your involvement in finance and human resource matters within the Relevant Organisation; and* – *An explanation why your position was the most senior executive position within the Relevant Organisation ,* *at the time while you occupied the Qualifying Office*; and • *An organisation chart to show your position in the Relevant Organisation's management structure*]		
Qualifying Office 2	[To reflect the same fields as for Qualifying Office 1]		
Qualifying Office 3	[To reflect the same fields as for Qualifying Office 1]		

<table>
<tr><th colspan="3">(D) <u>Performance Indicators</u></th></tr>
<tr><td rowspan="3">Please provide a detailed description of your track record, including work done, experience gained and any accomplishments or any sources of regret or dissatisfaction during your tenure in the Qualifying Office(s):

[Aside from positive performance indicators, your description must include a full description of any incidents having significant negative reputational impact on the Relevant Organisation, as well as a description of the nature of your involvement with the incident, which happened during your tenure in the Qualifying Office or up to 3 years after your departure. These incidents include,

• In the case of <u>private</u>-sector Relevant Organisations:
– Any criminal convictions, civil penalties (including warnings), insolvency-related court orders (e.g. winding up or judicial management) and any other civil judgments to which the Relevant Organisation was subject, or for which proceedings are currently pending.

• In the case of <u>public</u>-sector Relevant Organisations:
– Any significant audit-findings against the Relevant Organisation.]</td><td>Qualifying Office 1</td><td></td></tr>
<tr><td>Qualifying Office 2</td><td></td></tr>
<tr><td>Qualifying Office 3</td><td></td></tr>
</table>

[*This field is applicable only to <u>private</u>-sector Relevant Organisations*] Please provide the Relevant Organisation's • Net profit after tax; and • Rate of dividend paid, for ***<u>each</u>*** of the years in which you held the Qualifying Office:	**Qualifying Office 1**	
	Qualifying Office 2	
	Qualifying Office 3	

(E) <u>Other Relevant Information</u>

Please provide a description of any other information which you think would be relevant for consideration by the Presidential Elections Committee. This would include, for example, community activities or initiatives demonstrating your engagement with ethnic groups other than your own:

[To state here]

(F) Declaration & Consent

I, [Name], do solemnly and sincerely declare:

- the information supplied by me, in this application, to be true and factual; and
- that I understand the roles and powers of the Elected President, as prescribed in the Constitution of the Singapore.

And I make this solemn declaration by virtue of the provisions of the Oaths and Declarations Act (Cap. 211), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

[Signature of Justice of the Peace / Commissioner for Oaths] [Signature of Applicant]

I hereby consent to the Presidential Elections Committee publishing this form (with the exception of the personal details in the Section A fields that are to be redacted), or any part of the contents thereof, in the event that I am successful in obtaining a Certificate of Eligibility.

[Signature of Applicant]