

SEVENTH PARLIAMENT OF SINGAPORE

Second Session

**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

**Presented to Parliament on
18th December, 1990**

COMPOSITION OF THE SELECT COMMITTEE

The Constitution of the Republic of Singapore (Amendment No. 3) Bill [Bill No. 23/90] was committed to the Select Committee by resolution of Parliament on 5th October, 1990. The Committee consisted of the Speaker as Chairman and the following Members:

Mr Abdullah Tarmugi (Siglap), Deputy Speaker.

Mr S. Chandra Das (Cheng San GRC).

Mr Chiam See Tong (Potong Pasir).

Mr Davinder Singh (Toa Payoh GRC).

Mr S. Dhanabalan (Kallang), Minister for National Development.

Mr Goh Chok Tong (Marine Parade GRC), Prime Minister and Minister for Defence.

Prof. S. Jayakumar (Bedok GRC), Minister for Law and Minister for Home Affairs.

BG Lee Hsien Loong (Teck Ghee), Deputy Prime Minister and Minister for Trade and Industry.

Dr Ong Chit Chung (Bukit Batok).

Dr Ow Chin Hock (Leng Kee).

BG George Yong-Boon Yeo (Aljunied GRC), Acting Minister for Information and the Arts and Senior Minister of State, Ministry of Foreign Affairs.

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**REPORT OF THE SELECT COMMITTEE
ON THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE
(AMENDMENT NO. 3) BILL [BILL NO. 23/90]**

The Select Committee to whom the Constitution of the Republic of Singapore (Amendment No. 3) Bill [Bill No. 23/90] was committed has agreed to the following report:

Introduction

1. In accordance with Standing Order No. 75 (Advertisement when Bill committed to a Select Committee), an advertisement inviting written representations on the Constitution of the Republic of Singapore (Amendment No. 3) Bill [Bill No. 23/90] was published in the *Berita Harian*, *Lianhe Zaobao*, *Tamil Murasu*, and *The Straits Times* of 9th October, 1990. The invitation was also publicised in a press release. Written representations could be submitted in Malay, Chinese, Tamil or English and the closing date was 31st October, 1990.

Meetings of the Committee

2. The Select Committee held 4 meetings, two of which (14th and 15th November, 1990) were held to hear oral representations.

Written Representations Received

3. The Select Committee received 40 written representations. Six were disregarded for being anonymous or semi-anonymous and one for very late representation. The remaining 34 representations considered by the Committee are listed in Appendix II.

Representors Who Gave Oral Evidence

4. Ten representors who represented a cross-section of the submissions were invited to give oral evidence. The names of these representors are:

(1)	Mr Shriniwas Rai	Paper 9
(2)	Mr Kenneth Chew	Paper 10
(3)	Mr Vincent Tay Shian Poh	Paper 12
(4)	Mr Khaleel Namazie, Mr Sean Ng, Mr Bernard Tan and Mr Anil Kumar Samtani representing The National University of Singapore Law Club	Paper 21
(5)	Mr C. R. Rajah, Mr Warren Khoo and Mr Michael Hwang representing The Law Society of Singapore	Paper 31
(6)	Mr Keith Tay, Mr Tan Kok Hiang, Mr Kenneth Chew Keng Seng, Mr Lim Hock San, Mr Gerard Ee Hock Kim, Mr Don Ho Mun-Tuke and Mr Lee Wai Kok representing The Institute of Certified Public Accountants of Singapore	Paper 27
(7)	Mr Hoon Dah Hao, Mr Edwin Pang, Miss Tang Meen Er, Mr Gary Chan, Mr Goh Keng Hock and Mr Charan Singh representing The National University of Singapore Democratic Socialist Club	Paper 24
(8)	Mr Walter Woon	Paper 26
(9)	Assoc. Prof. Valentine S. Winslow	Paper 28
(10)	Mr Wee Han Kim	Paper 13

Views of the Committee on the Main Issues raised by Members of Parliament and Representatives

5. The following paragraphs set out the Committee's views on the

main issues raised by Members of Parliament and the representors. The views are set out under two headings "Non-Financial Provisions" and "Financial Provisions".

NON-FINANCIAL PROVISIONS

Elections for the President

(1) Whether to drop the requirement to pre-qualify candidates.

6. The Bill takes the approach that the Presidency is a post of the highest honour and responsibility. It is a custodial post of the highest importance. The President is expected to protect the country's financial reserves and safeguard the integrity of the public service. Therefore Presidential Candidates should not merely meet the minimal Constitutional qualifications and disqualifications applicable for election as an MP. They should fulfil exacting standards of competence, experience and rectitude, which should be spelt out in the Constitution.

7. Some representors, however, maintained that anyone who was not obviously disqualified, for example, because of bankruptcy or recent criminal convictions, should be free to stand for election as President, even if he is manifestly unsuitable for the post. The Presidential Elections Committee (PEC) should not shortlist candidates, or exclude those who in its opinion lacked the prerequisites for the job. The prerogative to decide whether a candidate is worthy should be left to the electorate.

8. The Committee does not accept this view. It favours retaining the approach of pre-qualifying candidates (although, as discussed later, it recommends amendments to the provision on qualifications and disabilities of the President).

9. The issue is not the right of every citizen to stand for election as President, as some representors saw it. It is to ensure that voters are given qualified and suitable candidates to choose from. Only then will there be some guarantee that the right person is chosen to fulfil a most important role. This principle of pre-qualifying candidates is not

new. Not everyone can stand for election to be Members of Parliament. Yet the Constitution does not allow a person who is of unsound mind or who has recently been convicted of a serious offence to stand for election. It prevents him from standing in the first place. But this pre-qualification is minimal.

10. The Elected President has far greater and more crucial responsibilities than a Member of Parliament. His role is to safeguard Singaporeans against a Government which misuses the reserves, corrupts the public service, or abuses its powers. Almost all representors - including those opposed to the pre-qualification approach - agreed that the powers to be vested in the President were critical, and that the nation must get "the best man" for the job.

11. The question is how do we ensure that we get this best man or, if that is difficult, to have safeguards to at least prevent a totally unsuitable person from being accidentally elected.

12. Merely fulfilling the minimal qualifications for election as an MP is wholly inadequate. The criteria for becoming President should be more stringent than those for becoming Prime Minister. Theoretically any citizen who is eligible to stand for election as MP can aspire to become Prime Minister. But the Prime Minister is not chosen directly by the electorate. He is chosen by the MPs, as the person who commands the confidence of the majority of MPs in Parliament. In Singapore's political system, the Prime Minister has to meet high standards set by his own political party. 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.

13. These tests do not exist in the case of the Presidency. The President will be directly elected to that office. He does not even have to belong to a political party. Safeguards are therefore necessary to guarantee that voters are given suitable candidates to choose from. We will be more certain that the best man is elected by retaining, not

abandoning, the pre-qualification approach. The Constitution should therefore require aspirants to that office to have certain demonstrated *attributes, experience and expertise*.

(2) Whether Article 18 on qualifications and disabilities of the President should be amended.

14. However, the Committee recommends that the proposed Article 18 be substantially amended to incorporate the following useful suggestions:

- (a) *To make it clear that besides the categories of people deemed qualified, the Presidential Elections Committee (PEC) can also consider others.*

Some representors felt that Article 18 was ambiguous as to whether the PEC could accept candidates who did not fit any of the examples in the "deeming" provision. Legally, the existing language of Article 18 is unambiguous. The PEC does have the freedom to consider such candidates. However, the Committee agrees that the article can be redrafted to make this point clearer.

- (b) *To provide criteria to guide the PEC in deciding the suitability of individuals who do not automatically qualify.*

Some representors argued for inclusion of criteria to guide the PEC in deciding what "experience and qualifications" a candidate needs to carry out effectively the functions and duties of the President. The Committee agrees.

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 of, for example, Telecom or PUB. The Committee proposes to add to Article 18 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."

- (c) ***To delete Judges and Judicial Commissioners from the appointments considered automatically qualified***

Some representors questioned whether legal and judicial appointments belonged in the list deemed qualified. 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.

But the offices of Chief Justice and Attorney-General should not be excluded. A Chief Justice, having served as head of the Judiciary, would have considerable experience in adjudicating complicated cases especially on appeal cases. The experience he has gained as the highest judicial officer qualifies him as a candidate for the Presidency.

Similarly, a person who has served as Attorney-General would have advised Government on major legal issues involving nearly every field of law. As the principal legal adviser to Government, he would have also acquired an intimate knowledge and understanding of the workings of Government Ministries and the Organs of State. His office should be retained in the list.

- (d) ***To require candidates to be persons of integrity, good character and reputation.***

Several representors emphasised that the President should be a person of the highest reputation. One clearly

said that the job of the Elected President was many times more onerous and responsible than that of an accountant or auditor of a firm, who exercises a similar checking function. To be allowed to practise as an accountant, a person must not only pass examinations to prove that he is knowledgeable and competent, but must also satisfy the registration board that he is of good character.

Another representor pointed out that a person who has held office for more than three years as a Minister or a CEO of a company, but was then dismissed from the office for misconduct, should surely not be deemed qualified to be a Presidential candidate.

The Committee agrees that Presidential candidates should be required to satisfy the PEC that they are persons of integrity, good character and reputation, and proposes to amend Article 18 accordingly.

(e) *To specify a minimum age.*

The Committee agrees with the views of several representors that Presidential candidates should be at least of a certain age. They will then have acquired sufficient advancement and experience in their careers, and also the maturity and wisdom necessary for discharging the important functions of the President. It recommends that this minimum age should be 45.

The Committee does not accept a related proposal to specify *a maximum* age. If it is pegged too low, such as 70, it may unnecessarily deprive the nation of the services of an individual who has exceeded that age but is still mentally alert, physically fit and an eminently suitable President. If it is pegged too high, such as 90, it becomes superfluous.

- (f) ***To require a Presidential candidate to resign from his political party, and upon election to affirm on oath that he will not allow his past party affiliations to affect the discharge of his duties.***

The Committee carefully considered the question whether the President should be allowed to belong to a political party. Some representors argued that candidates in Presidential elections should not belong to any political party. Others suggested that while a candidate may be a party member, and may contest Presidential elections under the party banner, upon election he should formally resign from his political party before assuming office.

If a candidate belonged to a political party, formally cutting this link cannot really obliterate his sympathy for the party's goals. The President, as one representor put it, will be "a political animal". In offering himself for election, he must tell voters his general political and personal philosophy, his specific stand on current issues, and even whether he would approve or disapprove individual spending proposals which draw upon the reserves. A major issue will be the calibre, qualifications and experience of the candidates: voters must decide which candidate has better credentials to act as custodian of the nation's reserves.

Political parties will have views on these questions. They will want to, and should be allowed to, campaign for or against individual candidates in Presidential elections. Each will endorse the candidate it considers best qualified and whose position comes closest to its own, and encourage its supporters to vote for him.

However, when the President is elected he must represent, and be seen to represent, the collective interests of all its citizens. He must rise above personal interests and the interests of his family, his friends and his political party. He must act according to his own judgment of what is in the best national interest. On occasions he may have to take strong stands on matters coming within the

President's purview against the political parties which supported him.

It does not follow that a President who is a member of a political party is incapable of discharging his functions impartially. Every President has to take an oath of office and affirm that he will discharge his duties "without fear or favour, affection or ill-will". He is bound by this oath for the duration of his term of office. If voters believe that a candidate cannot live up to this oath, they should not elect him. A candidate who is likely not to heed the oath and instead pursue partisan political interests will probably do so even if he formally severs his links with his Party.

However, the Committee noted the views of representors that the President must not only be above party politics *but be manifestly seen to be so*. If he continues to be a member of a political party there may be lingering doubts that the President is still subject to party discipline and is thus constrained to act in accordance with decisions of his party caucus. It may be more re-assuring to the public if the President stood for election in his own right and not on a party platform. The Committee therefore decided that it is preferable for candidates in Presidential elections to stand as individual citizens, and for voters to judge them as such. Naturally the voters will take into account any endorsements or support which a candidate has received from one political party or other. Campaigning by political parties should be allowed; they can support any candidate whether or not he had previously belonged to that party. But it will be unlike the situation in general elections, where candidates stand under a party flag, voters vote for a party slate, and MPs who are returned to Parliament are subject to the Party Whip.

The Committee therefore supports the proposal of some representors that candidates for Presidential elections should not be members of any political party. Those who were should resign their membership before contesting the elections. Further, the Committee

recommends that, upon election, the President should take an Oath of Office explicitly declaring that in carrying out his duties, he will not allow any past affiliation with a political party to affect his judgment.

(g) ***To require candidates to meet the requirements of Article 44(2)(c) and (d) of the Constitution.***

Article 44(2)(c) and (d) of the Constitution provide that a person, to be qualified for election as a Member of Parliament, must:

- have his name appearing in a current register of electors;
- be resident in Singapore at the date of his nomination for election and be so resident for periods amounting in the aggregate to not less than 10 years prior to that date.

The Committee recommends that these same requirements should also be required for candidates for Presidential election.

(h) ***Other proposals considered but not accepted***

Whether to limit the number of terms for a President.
The Committee did not accept a proposal to limit a person to a maximum of two terms as President. There is no reason to disqualify a candidate from running as President simply because he has previously served two terms. This merely deprives the country of the services of someone who has in fact a proven track record of being a good President.

Whether to broaden the list of people deemed qualified for candidacy. 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.

Text of revised Article on Qualifications and Disabilities

15. With the amendments proposed by the Committee, the revised Article on Qualifications and Disabilities will therefore read as follows:

- (1) *No person shall be elected as President unless he is qualified for election in accordance with the provisions of this 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 with a paid-up capital of at least \$100 million or its equivalent in foreign currency; or*

- (iv) *in any 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.*
- (3) *The President shall -*
 - (a) *not hold any other office created or recognised by this Constitution;*
 - (b) *not actively engage in any commercial enterprise;*
 - (c) *not be a member of any political party; and*
 - (d) *if he is a Member of Parliament, vacate his seat in Parliament.*
- (4) *Nothing in clause (3) shall be construed as requiring a person exercising the functions of the office of President pursuant to Article 22N or 22O to -*
 - (a) *resign his membership of any political party; or*
 - (b) *vacate his seat in Parliament or any other office created or recognised by this Constitution.*

(3) Whether the basic provisions on the establishment and composition of the Presidential Elections Committee (PEC) should be spelt out in the Constitution.

16. The Bill provides that all aspects of the PEC shall be contained in a separate law on the conduct of Presidential elections which will be enacted by Parliament. Several representors pointed out that since the PEC will have the key function of prequalifying candidates for Presidential elections, its composition becomes an important question. They proposed setting out this composition in the Constitution.

17. The Committee agrees with this view. It proposes that the PEC should comprise:

- (a) The Chairman, who should be the Chairman of the Public Service Commission (if he is absent or otherwise unable to

perform his functions, he shall nominate one of the Deputy Chairmen of the PSC to act as Chairman).

- (b) A member of the Presidential Council for Minority Rights, nominated by the Chairman of that Council.
- (c) The Chairman of the Public Accountants Board.

Powers and Functions of the President

- (4) **Whether the President's safeguard role on amendments to the Constitution should apply to Articles other than those listed in proposed new Article 5(2A).**

18. The proposed new Article 5(2A) provides that unless the President directs otherwise, amendments to certain critical provisions of the Constitution will require the support of two-thirds of the voters in a referendum.

19. One representor felt that the Government should not be allowed easily to amend the Constitutional provisions on the maximum term of 5 years of each Parliament (Article 65) and the requirement to hold a General Election within 3 months after the dissolution of Parliament (Article 66). Unless these Articles are similarly entrenched, any Government with a two-thirds majority in Parliament can extend its stay in power without going to elections by amending these Articles.

20. The Committee accepts this suggestion. The proposed Article 5(2A) already covers Article 65. The Committee proposes that Article 66 (requirement to have a General Election) be also included.

21. *Fundamental Liberties.* In addition, the Committee proposes similarly entrenching Part IV of the Constitution which enshrines the Fundamental Liberties which Singaporeans are entitled to. No Government should be allowed to amend these provisions without being subject to the scrutiny of the President, who will have to consider if the amendments are justified. If the President considers

them unwarranted abridgements of fundamental liberties, then the matter will be put to a referendum.

(5) Whether the President should have discretion in issuing a Proclamation of Emergency.

22. The 1988 White Paper on *Safeguarding Financial Assets and the Integrity of the Public Services* stated: "In a state of emergency, the Government exercises sweeping executive and legislative powers. We need to prevent the Government from circumventing the new constitutional safeguards by resorting to emergency powers."

23. Two provisions of the Bill deal with this issue. Clause 21 amends Article 150 (on Emergency Powers) to ensure that no emergency legislation can be inconsistent with the provisions in the Constitution relating to the discretionary powers of the President. In addition, the proposed new Article 20(2)(f) gives the President discretion in:

"the withholding of consent to a request for the issue of a Proclamation of Emergency under Article 150".

24. One representor and a Member of Parliament called for the deletion of Article 20(2)(f), since the decision to proclaim an emergency should be entrusted to the Prime Minister and Cabinet, not the President. The Committee agrees. The Government of the day should have full freedom to deal swiftly and expeditiously with any emergency threatening the security or economic life of the Republic. It, not the President, should decide whether an Emergency should be declared. The 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.

25. The Committee accordingly recommends deleting Article 20(2)(f). Clause 21 - the amendment to Article 150 - is sufficient to prevent any Government from using emergency powers to circumvent the safeguard roles of the President. The Committee proposes drafting amendments to clause 21 to ensure this.

(6) Whether the President's concurrence should be required for additional appointments.

26. The Bill provides that certain specified appointments in the public service will require the President's concurrence. The Committee agrees with the suggestion of one representor to add the following appointments to the list:

- (a) Chairman and Members of the Presidential Council for Religious Harmony constituted under the Maintenance of Religious Harmony Act 1990.
- (b) Chairman and Members of the Advisory Board constituted under the Internal Security Act.

27. The President has a safeguard role in the exercise of powers by the Government under those two laws. However, he can only exercise his discretion where the Government proposes to act contrary to the recommendations of these two advisory bodies. A Government may circumvent this safeguard by packing these bodies with men who will do its bidding and not exercise independent judgment, so that it does not need to disagree with their recommendations. Hence it is necessary to subject these appointments to the President's concurrence.

(7) Whether the President's safeguard role in CPIB investigations should be extended to cover any CPIB investigations.

28. The proposed new Article 22F deals with the Prime Minister's refusal to consent to investigations concerning *Ministers* only. Some representors and Members of Parliament felt that this was too narrow. They expressed two concerns: a complaint may implicate the Prime Minister himself, in which case the President should be able to authorise CPIB to investigate. Secondly, the Article should also apply to investigations of individuals *other than Ministers*, since the Prime Minister may obstruct investigations of individuals which may eventually implicate a Minister.

29. These are valid points. The Committee therefore proposes to

amend the provision to cover CPIB investigations into *any person*. In effect the amendment will prevent, the Prime Minister from blocking investigations into any person.

The Council of Presidential Advisors (CPA)

(8) Whether the size of CPA should be changed.

30. Several suggestions were received on the size of the CPA and their method of appointment. The Committee considers that the approach in the Bill is generally satisfactory, except that the composition of 6 members will create problems in decision making if there is a tie in voting. To avoid this problem, the Committee recommends the size of the CPA should be 5. Two members each will be nominated by the President and the Prime Minister (as presently provided in the Bill). However, only one member should be nominated by the Chairman PSC.

(9) Whether to stagger the length of term of CPA members.

31. 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 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.

32. The Committee is in favour of strengthening the CPA as an important organ of state, helping the President to carry out his functions. It does not think it necessary or desirable to appoint CPA members for life, as one representor urged. Instead, it proposes that Presidential Advisors be appointed for fixed 6-year terms. To stagger these terms, for the *first* appointments to the CPA, half the appointees of the President and PM will serve for 3 years, while the other half will

serve for 6 years. The appointee of Chairman PSC will serve 6 years.

33. The Chairman of the CPA shall be appointed by the President from among the 5 members. He will relinquish the Chairmanship when a new President is elected, to enable the new President to appoint a new Chairman. This is because the Chairman of the CPA will have the additional duty of standing in for the President in the latter's absence (see paras 34-37 below).

(10) Whether the CPA should have the power to examine witnesses.

34. The Bill presently states that the CPA "shall not be entitled to hear objectors or examine witnesses in regard to any matter which is being considered by Council." Some representors felt that the CPA should be able to call up civil servants to answer questions, just like the Public Accounts Committee of Parliament. The Committee agrees that this is useful. It proposes to give the CPA the power to summon for oral examination any public officer, or officer of a key statutory board or Government company. However, no such officer appearing before the CPA shall divulge the proceedings of the CPA.

(11) Whether the President should consult the CPA in exercising his discretionary powers on appointments.

35. The Bill requires the President to consult the CPA before exercising his discretionary powers to approve or veto budgets of Government, statutory boards and key Government companies. On other matters the President is not required to consult the CPA, though he may do so.

36. The Committee heard views that the President should also consult the CPA on appointments. This is a useful suggestion. The President should have the benefit of all the information and advice available on a proposed appointee before he approves or vetoes the appointment. The Committee therefore recommends making such consultation obligatory. However, the final decision should still remain with the President, as is the case with financial matters.

37. There is no need for the President to consult the CPA when approving or disapproving detentions under the ISA, or Restraining Orders under the Maintenance of Religious Harmony Act. In those cases, he already has the advice of the Advisory Board or the Presidential Council for Religious Harmony. Nor should the President be required to consult the CPA in approving CPIB investigations. These enquiries are highly sensitive, and they are still only investigations, not criminal charges or convictions which may not necessarily follow.

Persons to exercise functions of President when the office is vacant or in cases of temporary disability of the President

(12) Whether to modify the provisions on the persons to exercise functions of the President when office is vacant.

38. Several representors expressed strong reservations over the Chief Justice temporarily exercising the functions of the President, when the office falls vacant before the expiry of the term of office or when the President is temporarily unable to perform his functions. They argued that this created a potential conflict of interest. The Judiciary may have to adjudicate a case involving the Internal Security Act, or decide a dispute between the Prime Minister and the President as to whether a Bill seeks to curtail or circumvent the President's discretionary powers. In any case, the Presidency will be a political post, and judges should not make political decisions.

39. The Committee accepts this view. It proposes that in such situations, instead of the Chief Justice, the person exercising the functions of the President shall be, in the following order:

- (a) Chairman of the Council of Presidential Advisers;
- (b) The Speaker of Parliament;
- (c) A person appointed by Parliament, as is now provided for in the Bill.

40. When the Chairman CPA stands in for the President, he cannot simultaneously perform the functions of Chairman CPA, and should therefore nominate another member of the CPA to act as Chairman.

41. *Vice-President.* Some representors suggested reviving an earlier proposal to create a Vice-President. The Government decided against having a Vice-President for reasons explained in the second White Paper. The Committee considers it unnecessary to create the post of the Vice-President. The proposed arrangements for persons to exercise the functions of President are practical and sufficiently flexible.

Removal of the President

(13) Whether proposed Article 22K should include the grounds on which the President may be removed.

42. The Committee accepts the suggestion of several representors that Article 22K should set out the grounds on which the President may be removed. It proposes the following grounds:

- (a) being permanently incapable of discharging the functions of his office by reason of mental or physical infirmity;
- (b) intentional violation of the Constitution;
- (c) treason;
- (d) misconduct or corruption involving abuse of the powers of his office;
- (e) any offence involving fraud, dishonesty or moral turpitude.

Immunity of the President from Suits

(14) Whether the President's immunity from suits in respect of acts or omissions in his official capacity should apply after he has ceased to hold office.

43. The proposed new Article 22J gives the President immunity from suits brought against him in respect of acts or omissions in his official or private capacity. However, that immunity only applies during the period "while any person holds office as President".

44. One representor urged that the immunity in respect of acts done by him in his *official* capacity should continue even after he has ceased to be President, while immunity for suits against him in his private capacity should be limited to his term of office. The Committee agrees that this distinction should be made.

FINANCIAL PROVISIONS

45. The Select Committee heard many proposals from representors on improving or strengthening the controls which the President would have on the spending of reserves by Government, statutory boards and Government companies. It is not possible for the Committee to explain in this Report why it could not accept every proposal. For example, it was proposed that the definition of "reserves" should be changed to "excess of tangible assets over liabilities", and that the accounting system of the Government be converted from a cash to an accrual basis of accounting. The Committee considers that the existing definition is sufficiently broad to include fixed assets like land and buildings. Similarly, the Committee feels that the accrual basis of accounting is not necessarily a superior system insofar as determining and safeguarding the reserves is concerned. The reserves of the Government can be ascertained from current records even though the system of accounting is on a cash basis, especially where there are proper procedures for keeping track of assets of Government and periodic reviews to ensure that valuations of assets are kept reasonably current.

46. The Committee, after careful consideration of the views made on the financial provisions, believes that certain issues, set out below, require review and amendments.

Provisions on key statutory boards and Government companies

(1) Whether the safeguards for the reserves of the key statutory boards and Government companies are adequate or overly restrictive?

47. Some Members of Parliament and representors observed that the provisions to safeguard reserves of the key statutory boards and Government companies emphasised control over the budgeted expenditure of these entities without regard to their revenue collection. They felt this was not the best approach since it is the overall balance that is important. Some also questioned the desirability of this method of control since some of the key statutory boards would have to operate like commercial entities. These are valid points.

48. *Whether statutory boards/Government companies should be controlled by expenditures:* The Committee agrees that the existing method of control in the Bill, which is by approved expenditures, may be too rigid for statutory boards and Government companies and could adversely affect their operational efficiency. For instance, a key statutory board could well be prevented from incurring additional expenditures to provide a new service to respond to changing market conditions. While reserves must be protected, there should not be undue restriction on operations of key statutory boards and Government companies. The Committee therefore recommends deletion of those provisions prohibiting expenditure by statutory boards and Government companies for which there is no provision in their approved budgets.

49. *Taking into account actual revenues:* Instead, the Committee recommends amendments whereby the *actual revenues* of these organisations will be taken into account as well. A key statutory board or Government company, in addition to its annual budget, must also submit to the President, within 6 months after the end of its financial year, an audited statement showing the actual revenues received and expenditure incurred in the course of the year. This will allow the President to know the actual performance of the statutory board or Government company during the past year. He can bear this in mind

when approving or disapproving the budgets for the subsequent years. Subsequent accounting of actual performance will also deter laxity and abuse in putting up budgets, such as inflating revenue estimates.

50. *Control over subsidiaries of the key Government companies:* One representor questioned the usefulness of controlling the Government companies specified in the Bill by way of their budgets as these are holding companies. It argued that the control should be over their subsidiaries. However, the Committee is of the view that it is neither desirable nor feasible to subject the budgets of *subsidiaries* of the key holding companies to the same controls as this will impede their ability to react speedily to market conditions and therefore undermine the original objective of establishing such entities. Many of these subsidiaries are publicly listed companies. Any attempt to milk them will immediately affect their share prices.

51. *Veto of budget of statutory board/Government company:* The Committee recommends retention of the President's power to disapprove the budget of a statutory board or Government company if it draws on reserves accumulated during the previous term of office of the Government. If he disapproves the budget, the statutory board or Government company must make a second attempt to obtain Presidential approval. The Committee agrees with one representor that a time frame should be stipulated for submission of the revised budget, and recommends a period of 3 months. If the revised budget is not approved within this period, the statutory board or Government company then cannot incur expenditure exceeding the amount approved in the budget for the previous financial year. The Committee, however, considers it not practicable to legislate to provide that the previous year's budget applies only if rates of revenue collection remain unchanged.

52. *Declaration by chairmen and CEOs of the statutory boards/Government companies:* The Committee also recommends that the chairmen and CEOs of the key statutory boards and Government companies be required to declare whether the budgets will draw on the reserves. A similar declaration should be submitted together with the statements on actual performance stating if there has been a drawing on the reserves.

53. *Duty to inform the President of expenditure likely to draw on the reserves:* The Bill presently imposes a duty on the chief executive officer and every member of a key statutory board to inform the President of any proposed expenditure that is likely to draw on the reserves. A similar duty is imposed on the chief executive officer and every director of a key Government company. The Committee recommends that this aspect of the Bill should be amended as follows:

Firstly, the Committee considers that the term "expenditure" is too restrictive and does not cover other conceivable means whereby the reserves can be drawn on, for example, a large and deliberate reduction in revenues. The Committee therefore recommends that this term be substituted by the term "transaction".

Secondly, the Committee is of the view that the duty to inform the President should not be imposed on *every individual member and director* of key statutory boards and Government companies. Instead this duty should be on their respective boards of directors and CEOs. This will place an onus on the board itself and the CEO to report to the President on proposed transactions that are likely to draw on the reserves. As such reports to the President are likely to be made only after the proposed transactions have been deliberated at board level and since the CEO would be most knowledgeable on such matters, the Committee considers it is only right that they bring their minds to bear on the issue and to make the report.

Thirdly, the Committee recommends that the President, upon receiving such information from the board of directors or the CEO, be empowered to veto such proposed transactions in the interests of protecting the reserves, in the same way that he can veto the budget of a key statutory board or Government company if he thinks that it is likely to draw on the reserves.

54. *Appointments to be no longer than 3 years:* The provisions to safeguard the reserves of key statutory boards and Government companies will work effectively provided their boards of directors comprise men and women of high integrity. There are no provisions to allow the President to revoke their appointments where they subsequently are suborned or they collude with the plans of a profligate

Government. The Committee feels that this is unsatisfactory. The Committee therefore recommends that all appointments of directors of key statutory boards and Government companies be for terms not exceeding 3 years, which can be renewed. The re-appointment of these officers then gives the President a fresh chance to consider and if necessary veto the names. The Committee decided against extending this 3-year limit to CEOs as it would affect the security of their employment as they are full time paid employees and such a restriction would make it difficult for these organisations to recruit able men as CEOs.

55. The Committee is of the view that the revisions outlined above will serve as sufficient checks on statutory boards and Government companies without unduly hampering their operations.

(2) Whether the President should have control over investment decisions.

56. One representor argued strongly for additional controls over investment decisions of key statutory boards and Government companies. Although assessment of viability of long-term projects is necessarily to some extent subjective, the Committee is satisfied that there are procedures to ensure that major capital projects have been carefully evaluated. The Committee considers it unnecessary to introduce such controls. If the President has a veto over investment decisions this will involve him in the actual operations of statutory boards and Government companies. This is undesirable. It is sufficient that he approves their budgets and has a veto over the appointment of key officers. In any event, the respective boards/CEOs will be obliged to inform the President of any transaction which may draw on the reserves, such as a particularly risky or dubious investment.

(3) Whether certain statutory boards should be excluded from the list.

57. *Removing Telecom, PSA and PUB from the list:* Apart from representations that privatisation be expressly made subject to Presidential control, some Members and representors asked if some of the key statutory boards listed in the Bill like the Telecommunication

Authority of Singapore should in fact be subject to Presidential control since these may be privatised soon. The Committee feels that this is a valid point. As some of the key statutory boards are also highly commercialised in their operations and operate in an internationally competitive environment, the Committee feels that Presidential control may unduly restrict their operational and competitive efficiency. Accordingly, it recommends that Telecoms, PSA and PUB be removed from the list of key statutory boards.

58. *List of statutory boards/Government companies to be set out in a Schedule:* On a related legal-drafting point, some representors criticised Article 22 whereby additions to the list of statutory boards can be made by Presidential Order. They argued that entrenched provisions in the Constitution should not be amended by subsidiary legislation. The Committee takes note of this and accordingly recommends that the list of key statutory boards should be set out in a new Fifth Schedule to the Constitution. Additions to the list in the Schedule could be made by the President acting on the advice of Cabinet by way of subsidiary legislation.

59. Similarly the Committee recommends that the key Government companies to be subject to Presidential control also be set out in the Fifth Schedule. Additions may be made by the President in accordance with the advice of the Government.

Provisions on Government reserves

(4) Whether the provisions to safeguard Government reserves are adequate.

60. Members of Parliament and representors made observations on the provisions concerning Government expenditure similar to views on statutory boards/Government companies, namely that these provisions focused only on budgeted expenditure without regard to revenue collections. They proposed that there should be control on the revenue aspect.

61. *Revenue collections to be taken into account:* The Committee agrees that there is a need to take into account revenue collections. Accordingly it recommends that the Minister for Finance be required to submit, together with estimates of expenditure, estimates of revenue. The Committee also recommends that consistent with amendments relating to key statutory boards and Government companies, the Minister also be required to submit a statement certifying whether the estimates of expenditure and revenue are likely to draw on the accumulated reserves. This was recommended by one representor. It will place an onus of responsibility on the Government when submitting its budget for Presidential approval and facilitate the work of the President.

62. Furthermore, as in the case of key statutory boards and Government companies, the Committee recommends that the Minister for Finance be required to submit to the President at the end of every Government financial year an audited statement of the actual receipts and expenditures incurred during the financial year (currently prepared and presented to Parliament under the Financial Procedure Act) together with a statement of the assets and liabilities of Singapore, and a statement as to whether there has indeed been a draw on the reserves. The President will thus have a complete picture of the impact of the previous year's budget on the reserves and can take that into account when considering the following year's budget.

63. *Reduction or waiver of any tax or charge:* However, the Committee does not accept the proposal that the President should also give his approval before the Government can reduce or waive any tax or charge. Taxation is a major tool of national fiscal policy and a Government should not be constrained in acting expeditiously to respond to changes to the economy. The Committee's proposal that the Minister for Finance must subsequently submit to the President at the end of the financial year the actual expenditure and revenue position of the Government is an adequate control.

(5) Whether President's approval should be required before debts can be incurred by the Government.

64. Some representors felt that there should not be a requirement

that debts to be incurred by the Government must also be approved by the President. The Committee agrees that if interpreted strictly, this could render totally unworkable the daily operations of the Government. At the same time, if this requirement is lifted totally, a reckless Government could conceivably incur massive debts with no regard to its ability to discharge them in the future from its current revenue or reserves. This could lead to the danger of reserves being drawn upon in future to meet these liabilities. The President will need some method to discourage Government from incurring reckless debts. In this regard the Committee makes three recommendations.

- (a) *Duty to be placed on Accountant-General and Auditor-General:* The Committee recommends imposing a duty on the Accountant-General and the Auditor-General to inform the President of any proposed transaction which to their knowledge is likely to draw on the reserves. If the President concurs with their view after consulting CPA, he should have the right to veto the proposed transaction.
 - (b) *President to receive statement of financial liabilities:* The Committee also recommends an amendment to require the Minister for Finance to submit to the President a statement of outstanding guarantees and other financial liabilities. This statement of outstanding guarantees and other financial liabilities should be submitted at the close of the financial year.
 - (c) *President may alert the public:* If the President is of the opinion that certain outstanding liabilities are likely to draw on the reserves, he shall formally inform the Prime Minister and shall cause his opinion to be published in the *Gazette*. In this way, even though the transactions may not require his approval, the President can draw the attention of the public where these items can endanger the reserves.
- (6) **Whether the Bill should set out the criteria upon which the President is to withhold his assent to Supply Bills or disapprove budgets.**
65. Some representors were concerned that there could be a

President who might make irrational decisions and prevent the Government from incurring much needed expenditure. They argued that the Bill should spell out the criteria by which the President would use his veto over budgets.

66. In the Committee's view the Bill merely gives the elected President an option to withhold his assent to the Supply Bill or disapprove the budgets of statutory boards or Government companies if there is a likelihood of drawing on the reserves. This approach should be maintained. Where the President is persuaded that there is a genuine need for deficit financing he can assent or approve. It is not possible or desirable to lay down any further detailed criteria by which the President must act. For instance, to provide that he must disapprove if the draw on reserves exceeds a certain margin will tie the hands of the President unduly and could be against national interests; there may be a genuine need to go into deficit financing to turn round a sluggish economy. Should the President act irrationally, the Bill already contains other provisions enabling the Government, statutory board or Government company to operate on the previous year's approved budget. In *extremis* the Government can always attempt to remove the President. This only underlines the vital importance of selecting the right person to become President.

67. *President's failure to convey decision on Supply Bill:* However, 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.

68. *Withholding of assent to Supplementary Supply Bill:* Advances made from either the Contingencies Fund or the Development Contingencies Fund must be replaced by provision for supplementary estimates in a Supplementary Supply Bill. The Bill now provides that President must concur before advances can be made from either

Contingencies Fund. Therefore the Committee feels that the President, in considering whether to withhold assent to a Supplementary Supply Bill, should not take into account amounts provided therein to replace amounts advanced from either Contingencies Fund as he had previously approved them. The Committee recommends an amendment to make this clear. Consistent with this, the Committee recommends an amendment whereby should the President withhold assent to the Supplementary Supply Bill, then Parliament cannot by resolution authorise expenditure in excess of what has already been advanced from either Contingencies Fund.

69. *No Supply Law by first day of Financial Year:* The Committee recognises that a problem can arise where if by the first day of the Financial Year, no Supply Law has come into force, either on account of administrative delay, withholding of assent by President or other reasons. The Government will no longer be able to function. The Committee therefore recommends that the provisions of existing Article 146(5) be reinstated in the Constitution to deal with this situation.

(7) Whether public officers and officers of key statutory boards/Government companies failing to report to the President as required on reserves should be subject to special sanctions.

70. The Committee has recommended that the duty to inform President of transactions likely to draw on reserves be imposed not on individual officers but on the respective boards of directors and CEOs of key statutory boards and Government companies, as well as the Accountant-General and the Auditor-General. The proposed controls over the appointment of directors and CEOs of key statutory boards and Government companies will keep such omissions to a minimum as only persons of high integrity can be expected to be appointed to such positions. The Auditor-General and the Accountant-General can also be expected to be officers of high integrity who would carry out their duties diligently.

(8) Other Amendments

71. *Different commencement dates for different aspects:* As the public

sector (including certain key statutory boards and Government companies) would have already begun its preparations for the FY 1991 Budget, the Committee recognises the immediate practical difficulties the public sector will face in complying immediately with the new provisions on safeguards of reserves for financial year 1991. Sufficient time may also be needed to put into place the necessary administrative arrangements for the smooth implementation of the various controls. The Select Committee therefore recommends that the Bill be amended to allow the financial aspects of the Bill to be brought into operation in stages.

72. In this regard the Committee notes that the amendments in the Bill, especially the financial provisions constitute radical changes to established law and procedures not only for the Government but also for the key statutory boards and Government companies. Considerable care has been taken in drafting these provisions to strike a balance so that while the President has an effective safeguard role, there is no undue constraint on the normal operations of Government, the key statutory boards and Government companies.

73. But the amendments introduce novel arrangements, unparalleled elsewhere in the world. When the Act comes into force and the provisions are actually implemented, it is possible that unforeseen problems may arise in the working of the system. Further amendments may be needed to make adjustments and requirements in the light of experience gained in the implementation of the Bill, say, during the first 2 years after its implementation. Such amendments should not be made subject to the strict requirements set out in the proposed new Article 5(2A). Therefore new Article 5(2A) should be brought into operation only after any adjustments or requirements have been made.

74. *Position of Auditor-General should be spelt out in the Constitution:* Arising from representation that auditors are essential to ensure compliance with the new procedures, the Committee recommends incorporating the provisions similar to those in the pre-1963 Constitution of Singapore relating to the appointment of the Auditor-General. The provisions should set out the establishment, tenure, role and functions of the Auditor-General.

Summary of Recommendations for Amendments to the Bill

75. The Select Committee, having deliberated on these issues, recommends the following amendments to the Bill:

Amendments to the non-financial provisions

- (1) The proposed new Article 18 (on qualifications and disabilities of the President) be amended:
 - (a) to make it clear that in addition to the categories of people who are deemed qualified, others can also be considered by the PEC;
 - (b) for this purpose, to provide a criterion as follows:

" ... in any other similar 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."
 - (c) to require every candidate to satisfy the PEC that he is a person of integrity, good character and reputation;
 - (d) to require that candidates for election to the office of President be not less than 45 years of age;
 - (e) to delete references to the Judges and Judicial Commissioners from the list of people who should be considered automatically qualified;
 - (f) to require a candidate in the Presidential elections to cease to be a member of any political party, and on

election to affirm on oath that he will not allow his past affiliation with the party to affect the discharge of his duties.

Accordingly, the revised provision will read as follows:

- (1) *No person shall be elected as President unless he is qualified for election in accordance with the provisions of this 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 disqualification 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 with a paid-up capital of at least \$100 million or its equivalent in foreign currency; or*
 - (iv) *in any 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.

- (3) *The President shall -
 - (a) not hold any other office created or recognised by this Constitution;
 - (b) not actively engage in any commercial enterprise;
 - (c) not be a member of any political party; and
 - (d) if he is a Member of Parliament, vacate his seat in Parliament.*
- (4) *Nothing in clause (3) shall be construed as requiring a person exercising the functions of the office of President pursuant to Article 22N or 22O to -
 - (a) resign his membership of any political party; or
 - (b) vacate his seat in Parliament or any other office created or recognised by this Constitution.*
- (2) **The basic provisions on the composition of the PEC should be incorporated in the Constitution.**
- (3) **The President's safeguard role on constitutional amendments should also apply to Article 66 and to Part IV (Fundamental Liberties) of the Constitution.**
- (4) **Article 20(2)(f) which empowers the President, acting in his discretion, to refuse to consent to an issuance of a Proclamation of Emergency should be deleted. Instead, the amendments to Article 150 of the Constitution should be strengthened to ensure that no Government can, through the use of emergency powers, circumvent the safeguard roles of the President.**
- (5) **The President's concurrence should also be required for appointments to the Presidential Council on Religious Harmony constituted under the Maintenance of Religious Harmony Act and the Advisory Board constituted under the Internal Security Act.**

- (6) The appointments of Chairmen and members/directors of the boards of the key statutory boards/Government companies which require Presidential approval shall be for a term not exceeding 3 years. Any re-appointment will also require President's approval.
- (7) The President's safeguard roles in CPIB investigations should be amended to cover CPIB's investigations into any person.
- (8) The size of the CPA should be 5 members. The Chairman of the PSC will nominate only one member.
- (9) The length of terms of members first appointed for the CPA should be staggered to provide for continuity. The Chairman of CPA should relinquish his post when a new President is elected.
- (10) The President should be required to consult the CPA on appointments.
- (11) The Chief Justice should not exercise the functions of the President. Instead, the Bill should provide that the Chairman of the CPA and the Speaker of Parliament, in that order, will perform the functions. If they are not available, Parliament will appoint a person to exercise such functions.
- (12) The CPA should have power to summon for oral examination any public officer or officer of a key statutory board/Government company. No such officer appearing before the CPA shall divulge the proceedings of the CPA.
- (13) The grounds on which the President may be removed should be incorporated.

- (14) The President's immunity of suits in respect of acts or omissions in his official capacity should apply even after he has ceased to hold office.

Amendments to the Financial Provisions

- (1) To amend Clause 1 of the Bill to enable the financial provisions to be brought into operation at a later date.
- (2) To amend Clause 25 (3) (b) and (c) of the Bill to postpone the operation of the financial controls over key statutory boards and Government companies to the following financial year if the new financial year of the statutory board/Government company commences less than 3 months after the financial controls come into force.
- (3) To exclude Telecom, PSA and PUB from the list of key statutory boards.
- (4) The list of the key statutory boards and Government companies now listed in new Articles 22 and 22B will be transferred to a Schedule to the Constitution. Additions to the Schedule may be made by order of the President acting on advice of the Cabinet.
- (5) To delete the requirement that a statutory board or Government company is prohibited from incurring expenditure for which no provision is made in their budgets.
- (6) To require a key statutory board/Government company to submit to the President, within 6 months after the end of its financial year, an audited statement showing the actual revenues received and expenditures incurred in the course of the year as well as an audited statement of assets and liabilities.

- (7) To require that both documents, the budget and the statements of revenues/expenditure and assets/liabilities, shall be accompanied by declarations by the Chairman and the CEO stating whether there is a likelihood of, or if there has been, a drawing on the reserves.
- (8) Consistent with the amendments to statutory boards/Government companies:
 - (a) to amend Article 147(4) to require the Minister for Finance to submit estimates of revenue in addition to estimates of expenditure and to require the Minister for Finance to submit a statement stating if the budget for the year is likely to draw on the reserves;
 - (b) to amend Article 147 to add a new clause to require the Minister for Finance to furnish to the President at the close of the Government's financial year, audited statements currently prepared under section 18 of the Financial Procedure Act showing the actual revenues/expenditures and the assets/liabilities together with a statement whether the reserves have been drawn on.
- (9) To require a revised budget to be submitted within 3 months from the first day of the financial year where, by this day, the President has not approved the budget of a key statutory board/Government company.
- (10) To amend the provisions requiring officers of statutory boards/Government companies to inform the President of any expenditure likely to draw on the reserves as follows:
 - (a) *Firstly*, the term "expenditure" should be substituted with "transaction";
 - (b) *Secondly*, the duty to inform the President should be imposed not on individual officers but on the

respective boards and the CEOs.

- (c) *Thirdly*, to provide that when the Board or CEO so informs the President of the likelihood of drawing on reserves, the President after consulting the CPA can veto the transaction.
- (11) To delete the requirement of the President's approval before the Government can incur any debt. New provisions should be added as follows:
- (a) To impose a duty on the Auditor-General and the Accountant-General to inform the President of any proposed transaction which to their knowledge is likely to draw on reserves. Where the President concurs with their view after consulting the CPA, he can disapprove such transaction.
 - (b) The Minister for Finance should submit to the President a statement of outstanding guarantees and other financial liabilities, together with a statement whether these are likely to draw on the reserves.
 - (c) Where the President after consulting the CPA considers that certain liabilities, though not requiring his approval, nevertheless might draw on the reserves, he shall state his opinion in writing addressed to the Prime Minister who shall cause that opinion to be published in the *Gazette*.
- (12) To amend new Article 148A to make it clear that the President when considering whether to withhold assent to a Supplementary Supply Bill shall disregard amounts contained therein which he had previously approved in the form of advances from any Contingencies Fund and, if he withholds assent to a Supplementary Supply Bill, then Parliament cannot by resolution authorise expenditure in excess of what has already been advanced from a Contingencies Fund.

- (13) To amend new Article 148A to provide that if the President fails to assent to a Supply or Supplementary Supply Bill within 30 days of presentation to him for assent, he will be deemed to have given his assent.
- (14) To incorporate the provisions of existing Article 146(5) of the Constitution in new Article 148B to deal with the situation where there is no Supply law by the first day of a financial year.
- (15) To incorporate provisions constituting the office of Auditor-General, similar to those contained in the pre-1963 Constitution of the State of Singapore. Such provisions will spell out the establishment, tenure, role and functions of the Auditor-General.

Text of Amendments to the Bill

76. The amendments to the Constitution of the Republic of Singapore (Amendment No. 3) Bill which are recommended by the Select Committee are incorporated in the reprint of the Bill which is annexed to this Report as Appendix I.

*Reprint of the Constitution of the Republic of Singapore
[Amendment Bill No. 3] as amended by the Select Committee.*

A BILL

intituled

An Act to amend the Constitution of the Republic of Singapore.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

1.-(1) This Act may be cited as the Constitution of the Republic of Singapore (Amendment No. 3) Act 1990 and
5 shall come into operation on such date as the President may, by notification in the *Gazette*, appoint.

Short title
and com-
mencement.

(2) The President may appoint different dates for the coming into operation of the different provisions of this Act.

2. Article 2 of the Constitution of the Republic of Singapore (referred to in this Act as the Constitution) is amended -

- (a) by deleting the words "Article 20" in the definition of "Civil List" in clause (1) and substituting the words "Article 22J"; 5
- (b) by inserting, immediately after the definition of "Consolidated Fund" in clause (1), the following definition:
 - " "Council of Presidential Advisors" means the Council of Presidential Advisors constituted under Part VA;"; 10
- (c) by deleting the words "appointed to exercise" in the definition of "President" in clause (1) and substituting the word "exercising"; 15
- (d) by inserting, immediately after the definition of "President" in clause (1), the following definition:
 - " "Presidential Elections Committee" means the Presidential Elections Committee established under Article 18;"; 20
- (e) by inserting, immediately after the definition of "remuneration" in clause (1), the following definition:
 - " "reserves", in relation to the Government, a statutory board or Government company, means the excess of assets over liabilities of the Government, statutory board or Government company, as the case may be;"; 25 30
- (f) by inserting, immediately after the definition of " "Speaker" and "Deputy Speaker" " in clause (1), the following definition:
 - " "term of office", in relation to the Government, means the period - 35
 - (a) commencing on the date the Prime Minister and Ministers first take and subscribe the Oath of Allegiance in accordance with Article 27 after a general election; and 40

(b) ending after the next general election on the date immediately before the Prime Minister and Ministers first take and subscribe the Oath of Allegiance in accordance with Article 27;" and

(g) by deleting the word "Vice-President," in the sixth line of clause (5).

10 **3.** Article 5 of the Constitution is amended by inserting, Amendment
immediately after clause (2), the following clause: of Article 5.

15 "(2A) Unless the President, acting in his discretion,
otherwise directs the Speaker in writing, a Bill seeking
to amend this clause, Articles 17 to 22, 22A to 220, 35,
65, 66, 69, 70, 93A, 94, 95, 105, 107, 110A, 110B, 151
or any provision in Part IV or XI shall not be passed by
Parliament unless it has been supported at a national
referendum by not less than two-thirds of the total
number of votes cast by the electors registered under
20 the Parliamentary Elections Act." Cap. 218.

4. Chapter 1 of Part V of the Constitution is repealed and Repeal and
the following Chapter substituted therefor: re-enactment
of Chapter 1
of Part V.

"Chapter I - The President"

25 The President 17.-(1) There shall be a President of Singa-
pore who shall be the Head of State and shall
exercise and perform such powers and functions
as are conferred on the President by this Consti-
tution and any other written law.

30 (2) The President shall be elected by the
citizens of Singapore in accordance with any law
made by the Legislature.

35 Presidential
Elections
Committee. 18.-(1) There shall be a Presidential Elec-
tions Committee whose function is to ensure
that candidates for the office of President have
the qualifications referred to in Article 19.

(2) The Presidential Elections Committee shall consist of -

- (a) the Chairman of the Public Service Commission;
- (b) the Chairman of the Public Accountants Board established under the Accountants Act; and
- (c) a member of the Presidential Council for Minority Rights nominated by the Chairman of the Council.

Cap. 2A.

(3) The Chairman of the Public Service Commission shall be the chairman of the Presidential Elections Committee and if he is absent from Singapore or for any other reason unable to discharge his functions, he shall nominate a Deputy Chairman of the Public Service Commission to act on his behalf.

(4) The office of the member of the Presidential Elections Committee nominated under clause (2) (c) shall become vacant if he -

- (a) dies;
- (b) resigns from office by a letter in writing addressed to the chairman of the Committee; or
- (c) has his nomination revoked by the Chairman of the Presidential Council for Minority Rights,

and the vacancy shall be filled by a new member nominated by the Chairman of the Presidential Council for Minority Rights.

(5) If the member of the Presidential Elections Committee referred to in clause (2) (b) or (c) is absent from Singapore or is for any other reason unable to discharge his functions, the Chairman of the Public Accountants Board or the Chairman of the Presidential Council for Minority Rights shall appoint a member of the Public Accountants Board or a member of the Presidential Council for Minority Rights, as the case may be, to act on his behalf.

(6) The Presidential Elections Committee may regulate its own procedure and fix the quorum for its meetings.

(7) The Presidential Elections Committee may act notwithstanding any vacancy in its membership.

(8) Parliament may by law provide for the remuneration of members of the Presidential Elections Committee and the remuneration so provided shall be charged on the Consolidated Fund.

(9) A decision of the Presidential Elections Committee as to whether a candidate for election to the office of President has fulfilled the requirement of paragraph (e) or (g) (iv) of Article 19 (2) shall be final and shall not be subject to appeal or review in any court.

Qualifica-
tions and
disabilities
of President.

19.-(1) No person shall be elected as President unless he is qualified for election in accordance with the provisions of this 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 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.

(3) The President shall -

(a) not hold any other office created or recognised by this Constitution;

(b) not actively engage in any commercial enterprise;

(c) not be a member of any political party; and

(d) if he is a Member of Parliament, vacate his seat in Parliament.

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(4) Nothing in clause (3) shall be construed as requiring a person exercising the functions of the office of President pursuant to Article 22N or 22O to -

- (a) if he is a member of any political party, resign as a member of that party; or
- (b) vacate his seat in Parliament or any other office created or recognised by this Constitution.

Term of office.

20.-(1) The President shall hold office for a term of 6 years from the date on which he assumes office.

(2) The person elected to the office of President shall assume office on the day his predecessor ceases to hold office or, if the office is vacant, on the day following his election.

(3) Upon his assumption of office, the President shall take and subscribe in the presence of the Chief Justice or of another Judge of the Supreme Court the Oath of Office in the form set out in the First Schedule.

First Schedule.

Discharge and performance of functions of President.

21.-(1) Except as provided by this Constitution, the President shall, in the exercise of his functions under this Constitution or any other written law, act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet.

(2) The President may act in his discretion in the performance of the following functions:

- (a) the appointment of the Prime Minister in accordance with Article 25;
- (b) the withholding of consent to a request for a dissolution of Parliament;
- (c) the withholding of assent to any Bill under Article 22E, 22H, 144 (2) or 148A;
- (d) the withholding of concurrence under Article 144 to any guarantee or loan to be given or raised by the Government;

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- (e) the withholding of concurrence and approval to the appointments and budgets of the statutory boards and Government companies to which Articles 22A and 22C, respectively, 5
apply;
- (f) the disapproval of transactions referred to in Article 22B (7), 22D (6) or 148G;
- (g) the withholding of concurrence under Article 151 (4) in relation to the detention or further detention of any person under any law or ordinance made or promulgated in pursuance of Part XII; 10
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- (h) the exercise of his functions under section 12 of the Maintenance of Religious Harmony Act 1990; and
- (i) any other function the performance of which the President is authorised by this Constitution to act in his discretion. 20

(3) The President shall consult the Council of Presidential Advisors before performing any of his functions under Articles 22, 22A (1), 22B (2) 25
and (7), 22C (1), 22D (2) and (6), 144, 148A, 148B and 148G.

(4) Except as otherwise provided in clause (3), the President may, in his discretion, consult the Council of Presidential Advisors before performing any of his functions referred to in clause (2) (c) to (i). 30

(5) The Legislature may by law make provision to require the President to act after consultation with, or on the recommendation of, 35
any person or body of persons other than the Cabinet in the exercise of his functions other than -

- (a) functions exercisable in his discretion; 40
and

(b) functions with respect to the exercise of which provision is made in any other provision of this Constitution.

Appointment
of public
officers, etc.

22. Notwithstanding any other provision of this Constitution, the President, acting in his discretion, may refuse to make an appointment to any of the following offices or to revoke any such appointment if he does not concur with the advice or recommendation of the authority on whose advice or recommendation he is, by virtue of that other provision of this Constitution or any other written law, to act:

(a) the Chief Justice, Judges and Judicial Commissioners of the Supreme Court;

(b) the Attorney-General;

(c) the Chairman and members of the Presidential Council for Minority Rights;

(d) the Chairman and members of the Council of Presidential Advisors appointed under Article 37B (1) (a);

(e) the chairman and members of the Presidential Council for Religious Harmony constituted under the Maintenance of Religious Harmony Act 1990;

(f) the chairman and members of an advisory board constituted for the purposes of Article 151;

(g) the Chairman and members of the Public Service Commission;

(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 established under the Singapore Armed Forces Act;

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- (m) the Commissioner of Police; and
- (n) the Director of the Corrupt Practices Investigation Bureau.

Appointment
of members
of statutory
boards.

22A.-(1) Notwithstanding any other provision of this Constitution -

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- (a) where the President is authorised by any written law to appoint the chairman, member or chief executive officer of any statutory board to which this Article applies, the President, acting in his discretion, may refuse to make any such appointment or to revoke such appointment if he does not concur with the advice or recommendation of the authority on whose advice or recommendation he is required to act; or
- (b) in any other case, no appointment to the office of chairman, member or chief executive officer of any statutory board to which this Article applies and no revocation of such appointment shall be made by any appointing authority unless the President, acting in his discretion, concurs therewith.

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(2) (a) The chairman or member of a statutory board to which this Article applies shall be appointed for a term not exceeding 3 years and shall be eligible for re-appointment.

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(b) Any appointment to the office of chairman, member or chief executive officer of a statutory board under clause (1) (b) or any revocation thereof shall be void if made without the concurrence of the President.

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(3) This Article shall apply to the statutory boards specified in Part I of the Fifth Schedule.

(4) Subject to clause (5), the President acting in accordance with the advice of the Cabinet may, by order in the *Gazette*, add any other

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statutory board to Part I of the Fifth Schedule;
and no statutory board shall be removed from
that Part by any such order.

(5) No statutory board shall by order under
clause (4) be added to Part I of the Fifth
Schedule if the total value of the reserves of the
statutory board on the date of making of such
order is less than \$100 million.

Budgets of
statutory
boards.

22B.-(1) Every statutory board to which
Article 22A applies shall -

(a) before the commencement of its finan-
cial year, present to the President for
his approval its budget for that finan-
cial year, together with a declaration
by the chairman and the chief execu-
tive officer of the statutory board
whether the budget when
implemented is likely to draw on the
reserves which were not accumu-
lated by the statutory board during
the current term of office of the
Government;

(b) present to the President for his
approval every supplementary
budget for its financial year together
with a declaration referred to in
paragraph (a) relating to such
supplementary budget; and

(c) within 6 months after the close of that
financial year, present to the
President —

(i) a full and particular audited
statement showing the
revenue received and
expenditure incurred by the
statutory board during that
financial year;

(ii) as far as practicable, an audi-
ted statement of the assets
and liabilities of the statu-
tory board at the end of
that financial year; and

(iii) a declaration by the chairman and the chief executive officer of the statutory board whether the statements referred to in sub- 5 paragraphs (i) and (ii) show any drawing on the reserves not accumulated by the statutory board during the current term of office of the 10 Government.

(2) The President, acting in his discretion, may refuse to approve any budget or supplementary budget of any such statutory board if, in his opinion, the budget is likely to draw on 15 reserves which were not accumulated by the statutory board during the current term of office of the Government, except that if he approves any such budget notwithstanding his opinion 20 that the budget is likely to so draw on those reserves, he shall cause his opinion to be published in the *Gazette*.

(3) Where by the first day of the financial year of such statutory board the President has not approved its budget for that financial year, 25 the statutory board -

(a) shall, within 3 months of the first day of that financial year, present to the President a revised budget for that financial year together with the 30 declaration referred to in clause (1); and

(b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount 35 provided in the approved budget of the statutory board for the preceding financial year,

and if the President does not approve the revised budget, the statutory board may during that 40 financial year incur total expenditure not exceeding the amount provided in the approved budget of the statutory board for the preceding

financial year; and the budget for the preceding financial year shall have effect as the approved budget for that financial year.

5 (4) Any amount expended during a financial year under paragraph (b) of clause (3) shall be included in any revised budget subsequently presented to the President under that clause for that financial year.

10 (5) Nothing in this Article shall prevent the taking of any action by the Monetary Authority of Singapore in the management of the Singapore dollar; and a certificate under the hand of the chairman of the board of directors of the Monetary Authority of Singapore shall be conclusive evidence that any action was or was not taken for such purpose.

15 (6) It shall be the duty of every statutory board and its chief executive officer to which this Article applies to inform the President of any proposed transaction of the statutory board which is likely to draw on the reserves accumulated by the statutory board prior to the current term of office of the Government.

20 (7) Where pursuant to clause (6) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the transaction.

25 (8) Where after the commencement of this Article a statutory board is specified in Part I of the Fifth Schedule pursuant to an order made under Article 22A (4), any reference in this Article to the approved budget of a statutory board for the preceding financial year shall, in relation to the first-mentioned statutory board, be read as a reference to the budget for the financial year of the first-mentioned statutory board during which that order was made.

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40 Appointment of directors of Government companies.

22C.-(1) Notwithstanding the provisions of the memorandum and articles of association of the company, the appointment or removal of any person as a director or chief executive

officer of any Government company to which this Article applies shall not be made unless the President, acting in his discretion, concurs with such appointment or removal.

(2) (a) A director of a Government company 5
to which this Article applies shall be appointed
for a term not exceeding 3 years and shall be
eligible for re-appointment.

(b) Any appointment or removal of any
director or chief executive officer of a Govern- 10
ment company to which this Article applies
without the concurrence of the President shall
be void and of no effect.

(3) This Article shall apply to the Govern-
ment companies specified in Part II of the Fifth 15
Schedule.

(4) Subject to clause (5), the President acting
in accordance with the advice of the Cabinet
may, by order in the *Gazette*, add any other
Government company to Part II of the Fifth 20
Schedule; and no Government company shall be
removed from that Part by any such order.

(5) No Government company shall by order
under clause (4) be added to Part II of the Fifth
Schedule unless on the date of making of such 25
order -

(a) the value of the shareholders' funds of
the company attributable to the
Government's interest in the com-
pany is worth \$100 million or more; 30
and

(b) it is not a subsidiary of any of the
Government companies specified in
Part II of the Fifth Schedule; and for
the purposes of this paragraph, "sub- 35
sidiary" shall have the same meaning
as in the Companies Ac'

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Budgets of
Government
companies.

22D.-(1) The board of directors of every
Government company to which Article 22C
applies shall —

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(a) before the commencement of its financial year, present to the President for his approval its budget for that financial year, together with a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the budget when implemented is likely to draw on the reserves which were not accumulated by the Government company during the current term of office of the Government;

(b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget; and

(c) within 6 months after the close of that financial year, present to the President —

(i) a full and particular audited profit and loss account showing the revenue collected and expenditure incurred by the Government company during that financial year, and an audited balance-sheet showing the assets and liabilities of the Government company at the end of that financial year; and

(ii) a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the audited profit and loss account and balance-sheet of the Government company show any drawing on the reserves not accumulated

by the Government
company during the current
term of office of the
Government.

(2) The President, acting in his discretion, 5
may disapprove the budget or supplementary
budget of any such Government company if, in
his opinion, the budget is likely to draw on
reserves not accumulated by that company
during the current term of office of the Govern- 10
ment, except that if he approves any such budget
notwithstanding his opinion that the budget is
likely to so draw on those reserves, he shall
cause his opinion to be published in the *Gazette*. 15

(3) Where by the first day of the financial
year of such Government company the Presi-
dent has not approved its budget for that finan-
cial year, the Government company -

(a) shall, within 3 months of the first day of
that financial year, present to the 20
President a revised budget for that
financial year together with the
declaration referred to in clause (1);
and

(b) may, pending the decision of the 25
President, incur expenditure not
exceeding one-quarter of the amount
provided in the approved budget of
the Government company for the
preceding financial year, 30

and if the President does not approve the revised
budget, the Government company may during
that financial year incur a total expenditure not
exceeding the amount provided in the approved
budget of the Government company for the 35
preceding financial year; and the budget for the
preceding financial year shall have effect as the
approved budget for that financial year.

(4) Any amount expended during a financial
year under paragraph (b) of clause (3) shall be 40
included in any revised budget subsequently
presented to the President under that clause for
that financial year.

(5) It shall be the duty of the board of directors and the chief executive officer of every Government company referred to in this Article to inform the President of any proposed transaction of the company which is likely to draw on the reserves accumulated by the company prior to the current term of office of the Government.

(6) Where pursuant to clause (5) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the transaction.

(7) Where after the commencement of this Article a Government company is specified in Part II of the Fifth Schedule pursuant to an order made under Article 22C (3), any reference in this Article to the approved budget of a Government company for the preceding financial year shall, in relation to the first-mentioned Government company, be read as a reference to the budget for the financial year of the first-mentioned Government company immediately preceding the making of that order.

22E. The President, acting in his discretion, may withhold his assent to any Bill passed by Parliament which provides, directly or indirectly, for varying, changing or increasing the powers of the Central Provident Fund Board to invest the moneys belonging to the Central Provident Fund.

22F.-(1) In the exercise of his functions under this Constitution, the President shall be entitled, at his request, to any information concerning -

- (a) the Government which is available to the Cabinet; and
- (b) any statutory board or Government company to which Article 22A or 22C, as the case may be, applies which is available to the members of the statutory board or the directors of the Government company.

(2) The President may request -

(a) any Minister, or any senior officer of a Ministry or of a department of the Government; or

(b) the chief executive officer and any member of the governing board of any statutory board or the directors of any Government company to which Article 22A or 22C, as the case may be, applies,

to furnish any information referred to in clause (1) concerning the reserves of the Government, the statutory board or Government company, as the case may be, and the Minister, member, officer or director concerned shall be under a duty to provide the information.

Concurrence
of President
for certain
investigations.

22G. Notwithstanding that the Prime Minister has refused to give his consent to the Director of the Corrupt Practices Investigation Bureau to make any inquiries or to carry out any investigations into any information received by the Director touching upon the conduct of any person or any allegation or complaint made against any person, the Director may make such inquiries or carry out investigations into such information, allegation or complaint if the President, acting in his discretion, concurs therewith.

President
may withhold
assent to
Bill circum-
venting or
curtailing
his power.

22H.-(1) The President may, acting in his discretion, in writing withhold his assent to any Bill passed by Parliament (other than a Bill to which Article 5 (2A) applies) if the Bill provides, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon him by this Constitution.

(2) If the President withholds his assent to any Bill pursuant to clause (1), the Prime Minister may refer the Bill to the High Court to determine whether the Bill provides, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon the President by this Constitution.

(3) Where the High Court determines that a Bill does not provide, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon the President, and -

(a) no valid notice of appeal against that determination has been lodged within the time prescribed by the Rules of the Supreme Court; or

(b) where a valid notice of appeal has been lodged, the appeal has been withdrawn or dismissed,

the President shall be deemed to have assented to the Bill on the date the High Court made such a determination.

Restraining
order under
Maintenance
of Religious
Harmony
Act.
Act 26 of
1990.

221. The President, acting in his discretion, may cancel, vary, confirm or refuse to confirm a restraining order made under the Maintenance of Religious Harmony Act 1990 where the advice of the Cabinet is contrary to the recommendation of the Presidential Council for Religious Harmony.

Civil List
and personal
staff of
President.

22J.-(1) The Legislature shall by law provide a Civil List for the President.

(2) Any person exercising the functions of the office of President pursuant to Article 22N or 22O shall, during any period in which he exercises those functions, be entitled to such remuneration as the Legislature may by law provide.

(3) The Civil List of the President or any person exercising the functions of the office of President shall be charged on and paid out of the Consolidated Fund and shall not be diminished during the continuance in office of the President or that person.

(4) Subject to clause (5), the appointment, terms of service, disciplinary control, termination of appointment and dismissal of the personal staff of the President shall be matters for the President acting in his discretion.

(5) The President may, if he so desires, appoint to his personal staff such public officers as he may select, after consultation with the Prime Minister, from a list submitted by the Public Service Commission; and the provisions of clause (4) (except in so far as they relate to appointment) shall apply in relation to a person so appointed as respects his service on the personal staff of the President but not as respects his service as a public officer. 5 10

(6) The remuneration of the personal staff of the President, other than a person appointed under clause (5), shall be defrayed out of the Civil List of the President.

Immunity
of President
from suit.

22K.-(1) Except as provided in clause (4), the President shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to be done by him in his official capacity. 15

(2) No proceedings in any court in respect of anything done or omitted to be done by the President in his private capacity shall be instituted against him during his term of office. 20

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period of time during which such person holds office as President shall not be taken into account in calculating any period of time prescribed by that law. 25 30

(4) The immunity conferred by clause (1) shall not apply to -

- (a) any proceedings instituted under Article 22H;
- (b) any inquiry held by a tribunal pursuant to a resolution passed by Parliament under Article 22L; or
- (c) any proceedings before the Election Judge under Article 93A to determine the validity of any Presidential election. 35 40

Vacation of
and removal
from office
of President.

22L.-(1) The office of President shall become vacant -

- (a) upon the death of the President;
- (b) if the President resigns his office by writing under his hand addressed to the Prime Minister;
- (c) if the President is removed from office in accordance with clauses (3) to (7); or
- (d) if the Election Judge in the exercise of his powers under Article 93A determines that the election of the President was void and does not determine that any other person was duly elected as President.

(2) A poll shall be conducted for the election of a new President within 6 months from the date the office of President becomes vacant.

(3) The Prime Minister or not less than one-quarter of the total number of the Members of Parliament may give notice of a motion alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of -

- (a) intentional violation of the Constitution;
- (b) treason;
- (c) misconduct or corruption involving the abuse of the powers of his office; or
- (d) any offence involving fraud, dishonesty or moral turpitude,

and setting out full particulars of the allegations made and seeking an inquiry and report thereon.

(4) Where the motion referred to in clause (3) has been adopted by not less than half of the total number of the Members of Parliament, the Chief Justice shall appoint a tribunal to inquire into the allegations made against the President.

(5) A tribunal appointed by the Chief Justice shall consist of not less than 5 Judges of the Supreme Court of whom the Chief Justice shall be one, unless he otherwise decides and such tribunal may regulate its own procedure and make rules for that purpose. 5

(6) A tribunal shall, after due inquiry at which the President shall have the right to appear and to be heard in person or by counsel, make a report of its determination to the Speaker together with the reasons therefor. 10

(7) Where the tribunal reports to the Speaker that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any of the other allegations contained in such resolution, Parliament may by a resolution passed by not less than three-quarters of the total number of the Members of Parliament remove the President from office. 15 20

Determination
by Election
Judge that
President
was not
duly elected
or election
of President
was void.

22M.-(1) Where the Election Judge in the exercise of his jurisdiction under Article 93A determines -

(a) that the election of the President was void and does not determine that any other person was duly elected, then, a poll for the election of the President shall be taken not later than 6 months from the date of the determination; or 25 30

(b) that any other person was duly elected as President, then, such other person shall assume the office of President forthwith after the determination. 35

(2) Upon the Election Judge making any determination that the election of the President was void and no other person was duly elected as President, the person who immediately before such determination was exercising the functions of the office of President shall forthwith cease to exercise such functions. 40

(3) The exercise, performance and discharge by any person of the powers, duties and functions of the office of President shall not be invalid by reason only of the fact that the Election Judge subsequently determines that the election of such person as President was void or undue.

Persons to
exercise
functions of
President when
office is
vacant.

22N.-(1) If the office of President becomes vacant prior to the expiration of the term of office of the incumbent, the Chairman of the Council of Presidential Advisors or, if he is unavailable, the Speaker shall exercise the functions of the office of President during the period between the date the office of President becomes vacant and the assumption of office by a newly elected President.

(2) If neither the Chairman of the Council of Presidential Advisors nor the Speaker is available, Parliament may appoint a person in accordance with clause (3) to exercise the functions of the office of President during the period referred to in clause (1).

(3) Parliament shall not appoint any person to exercise the functions of the office of President under clause (2) unless the person is qualified to be elected as President.

(4) The provisions of this Chapter relating to Oath of Office of the President and immunity from suits shall apply in relation to any person exercising the functions of the office of President pursuant to this Article as if references to the President in those provisions were references to that person.

Temporary
disability
of President.

220.-(1) Subject to clause (2), if the President becomes temporarily unable, whether by reason of ill health, absence from Singapore or otherwise, to perform his functions under this Constitution or any other written law, one of the persons referred to in Article 22N shall exercise the functions of the office of President during the period of temporary disability, and the provisions of Article 22N shall apply, mutatis mutandis, to that person.

(2) Parliament shall not appoint any person to exercise the functions of the office of President under this Article unless the President agrees to that person being so appointed.

(3) Clause (2) shall not apply if the President is unable for any reason to signify his agreement to a person being appointed under this Article to exercise the functions of the office of President."

Amendment
of Article 35.

5. Article 35 of the Constitution is amended - 10

- (a) by deleting the words "acting in accordance" in clause (1) and substituting the words "if he, acting in his discretion, concurs";
- (b) by deleting the words "acting in accordance" in the first line of paragraph (b) of the proviso to clause (4) and substituting the words "if he, acting in his discretion, concurs"; and 15
- (c) by deleting the words "acting in accordance" in the second line of clause (6) (a) and substituting the words "if he, acting in his discretion, concurs". 20

New Part
VA.

6. The Constitution is amended by inserting, immediately after Part V, the following Part:

"PART VA

COUNCIL OF PRESIDENTIAL ADVISORS

Inter-
pretation.

37A. In this Part, unless the context otherwise requires - 25

"Chairman" means the Chairman of the Council constituted under Article 37B;

"Council" means the Council of Presidential Advisors; 30

"member" means a member of the Council and includes the Chairman.

Council of
Presidential
Advisors.

37B.-(1) There shall be a Council of Presidential Advisors which shall consist of -

(a) two members appointed by the President acting in his discretion; 35

(b) two members appointed by the President on the advice of the Prime Minister; and

(c) one member appointed by the President on the advice of the Chairman of the Public Service Commission.

(2) The President shall appoint one of the members of the Council as Chairman.

(3) A member of the Council shall serve for a term of 6 years and shall be eligible for reappointment upon the expiry of his term of office except that in respect of the appointment of the first members under clause (1), one of the two members referred to in paragraphs (a) and (b) of that clause shall be appointed for a term of 3 years instead of 6 years.

(4) During any period when the Chairman exercises the functions of the office of the President under Article 22N or 22O, he shall not act as the Chairman for that period and shall not take part in the proceedings of the Council and shall appoint -

(a) a person to serve as a member of the Council for that period; and

(b) a member of the Council to act as Chairman for that period.

Temporary appointments during incapacity of members.

37C. Whenever a member informs the Chairman that he is or will be incapable, for a period of 3 months or more, of taking part in the proceedings of the Council by reason of illness, absence or other cause, the Chairman shall convey the information to the person who appointed that member and that person may appoint another person to serve as a member for that period.

Qualifications of members

37D. No person shall be qualified to be appointed as a member unless he is-

- (a) a citizen of Singapore;
- (b) not less than 35 years of age;
- (c) a resident of Singapore; and
- (d) not liable to any of the disqualifications referred to in Article 37E.

Disquali-
fications
of members.

37E. A person shall be disqualified for appointment as a member if he-

(a) is or has been found or declared to be of unsound mind;

(b) is insolvent or an undischarged bankrupt; or

(c) has been convicted of an offence by a court in Singapore or a foreign country and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000 and has not received a free pardon:

Provided that where the conviction is by a court in a foreign country, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court in Singapore.

Termination
of member-
ship.

37F.-(1) The Chairman shall vacate his seat in the Council when a newly elected President assumes office during the term of appointment of the Chairman.

(2) A member shall vacate his seat in the Council -

(a) if he ceases to be a citizen of Singapore;

(b) if by writing under his hand addressed to the Chairman he resigns his seat; or

(c) if he becomes subject to any of the disqualifications referred to in Article 37E.

Determina-
tion of
questions
as to
membership.

37G.-(1) Any question as to the validity of the appointment of a member or whether any person has vacated his seat as a member of the Council shall be referred to and determined by a tribunal consisting of a Judge of the Supreme Court appointed by the Chief Justice and two other persons appointed by the Council.

(2) Any tribunal constituted under clause (1) shall —

(a) sit in private;

(b) afford the person concerned adequate opportunity to call witnesses and be heard; and

(c) report its decision to the Chairman.

(3) The decision of the tribunal shall be final and shall not be questioned in any court.

37H. Before any person who has been appointed Chairman or a member enters upon the duties of his office, he shall take and subscribe before a Judge of the Supreme Court the Oath of Allegiance and the Oath of Secrecy in the forms set out respectively in paragraphs 2 and 8 in the First Schedule.

37I. It shall be the function of the Council to advise and make recommendations to the President on any matter referred to the Council by the President pursuant to Article 21 (3) or (4).

37J.-(1) The proceedings of the Council shall be conducted in private and the Council may require any public officer or any officer of any statutory board or Government company to appear before the Council and to give such information in relation to any matter referred to the Council by the President pursuant to Article 21 (3) or (4) and such officer shall not disclose or divulge to any person any matter which has arisen at any meeting of the Council unless he is expressly authorised to do so by the President.

(2) In advising or making recommendations to the President in relation to any Supply or Supplementary Supply Bill, the Council shall state —

(a) whether its advice or recommendation is unanimous or the number of votes for and against it; and

(b) where the Council advises or recommends to the President to withhold

his assent to any Supply or Supplementary Supply Bill, the grounds on which the Council reached its conclusion.

(3) Subject to the provisions of this Constitution, the Council may make rules with respect to the regulation and conduct of its proceedings and the despatch of its business (including any quorum) but no such rules shall have effect until they have been approved by the President.

Council of
Presidential
Advisors
to report
to Prime
Minister
and
Parliament.

37K. The Council shall, as soon as practicable after advising or making any recommendation to the President in relation to a Supply or Supplementary Supply Bill, send a copy of the advice or recommendation to -

(a) the Prime Minister; and

(b) the Speaker who shall cause the copy to be presented to Parliament as soon as possible."

Amendment
of Article
39A.

7. Article 39A of the Constitution is amended -

(a) by deleting the words "3 candidates" wherever they appear in clause (1) (a) and in the definition of "group" in clause (4) and substituting in each case the words "not less than 3 but not more than 4 candidates"; and

(b) by deleting the words "3 candidates" wherever they appear in clause (2) (a) and substituting in each case the word "candidates".

Amendment
of Article 65.

8. Article 65 of the Constitution is amended by inserting, immediately after clause (3), the following clause:

"(3A) The President shall not dissolve Parliament after a notice of motion proposing an inquiry into the conduct of the President has been given under Article 22L (3) unless -

(a) a resolution is not passed pursuant to the notice of such motion under Article 22L (4);

(b) where a resolution has been passed pursuant to the notice of such motion under Article 22L (4), the tribunal appointed under Article 22L (5) determines and reports that the Pres-

ident has not become permanently incapable of discharging the functions of his office or that the President has not been guilty of any of the other allegations contained in such motion;

(c) the consequent resolution for the removal of the President is not passed under Article 22L (7); or

(d) Parliament by resolution requests the President to dissolve Parliament."

9. Article 69 (2) of the Constitution is amended by deleting the word "on" and substituting the words "if he, acting in his discretion, concurs with".

Amendment of Article 69.

10. Article 70 of the Constitution is amended by deleting the word "on" in the fifth line and substituting the words "if he, acting in his discretion, concurs with".

Amendment of Article 70.

11. The Constitution is amended by inserting, immediately after Article 93, the following Article:

New Article 93A.

" Jurisdiction to determine questions as to validity of Presidential election.

93A.-(1) All proceedings relating to the election of the President shall be heard and determined by the Chief Justice or by a Judge of the Supreme Court nominated by the Chief Justice for the purpose (referred to in this Constitution as the Election Judge).

(2) The Election Judge shall have the power to hear and determine and make such orders as provided by law on proceedings relating to the election of the President, and the decision of the Election Judge in any such proceedings shall be final.

(3) The procedure and practice in proceedings relating to the election of the President shall be regulated by rules which may be made by the Rules Committee constituted and appointed under section 80 of the Supreme Court of Judicature Act."

12. Article 94 of the Constitution is amended -

Amendment of Article 94.

(a) by deleting the words "acting on" in the eighth and ninth lines of clause (3) and substituting the

words "if the President, acting in his discretion, concurs with"; and

- (b) by deleting the words "acting on" in the second line of clause (4) and substituting the words "if he, acting in his discretion, concurs with".

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Amendment
of Article 95.

13. Article 95 (1) of the Constitution is amended by deleting the words ", acting on" and substituting the words "if he, acting in his discretion, concurs with".

Amendment
of Article 98.

14. Article 98 (5) of the Constitution is amended by deleting the word "on" in the second line and substituting the words "if he, acting in his discretion, concurs with".

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Amendment
of Article
105.

15. Article 105 of the Constitution is amended -

- (a) by deleting the words "acting in accordance" in clause (1) and substituting the words "if the President, acting in his discretion, concurs"; and

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- (b) by deleting the words "acting in accordance" in clause (3) and substituting the words "if he, acting in his discretion, concurs".

Amendment
of Article
106.

16. Article 106 (2) of the Constitution is amended by deleting the words "the National University of Singapore" and substituting the words "any university established by or under any written law".

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Amendment
of Article
107.

17. Article 107 (2) of the Constitution is amended by inserting, immediately after the word "shall" in the seventh line, the words ", if he, acting in his discretion, concurs with that representation,".

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Amendment
of Article
110A.

18. Article 110A of the Constitution is amended -

- (a) by deleting the words "acting in accordance" in the fifth line of clause (1) (a) and substituting the words "if the President, acting in his discretion, concurs"; and

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- (b) by deleting the words "acting in accordance" in clause (1) (c) and substituting the words "if he, acting in his discretion, concurs".

19. Article 110B of the Constitution is amended -

Amendment
of Article
110B.

(a) by deleting the words "acting in accordance" in clause (1) (a) and substituting the words "if the President, acting in his discretion, concurs"; and

(b) by deleting the words "acting in accordance" in clause (1) (c) and substituting the words "if he, acting in his discretion, concurs".

20. Part XI of the Constitution is repealed and the following Part substituted therefor:

Repeal and
re-enactment
of Part XI.

"PART XI

FINANCIAL PROVISIONS

Inter-
pretation.

142. In this Part, unless the context otherwise requires —

Cap. 80.

"Development Fund" means the Development Fund established by the Development Fund Act;

"financial year" means a period of 12 months ending on 31st March in any year.

No taxation
unless
authorised
by law.

143. No tax or rate shall be levied by, or for the purposes of, Singapore except by or under the authority of law.

Restriction
on loans,
guarantees,
etc.

144.-(1) No guarantee or loan shall be given or raised by the Government -

(a) except under the authority of any resolution of Parliament with which the President concurs;

(b) under the authority of any law to which this paragraph applies unless the President concurs with the giving or raising of such guarantee or loan; or

(c) except under the authority of any other written law.

(2) The President, acting in his discretion, may withhold his assent to any Bill passed by Parliament providing directly or indirectly for the borrowing of money, the giving of any guarantee or the raising of any loan by the Government if, in the opinion of the President,

the Bill is likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office.

(3) The laws to which clause (1) (*b*) applies are —

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- Cap 15. (a) the Asian Development Bank Act;
- Cap 27. (b) the Bretton Woods Agreements Act;
- Cap. 102. (c) the External Loans Act;
- Cap. 109. (d) the Financial Procedure Act;
- Cap. 144. (e) the International Finance Corporation Act; and 10
- Cap. 164. (f) the Loans (International Banks) Act.

Consolidated Fund.

145. There shall be in and for Singapore a Consolidated Fund into which, subject to the provisions of any law for the time being in force in Singapore, shall be paid all revenues of Singapore not allocated to specific purposes by any written law. 15

Withdrawal from Consolidated Fund, etc.

146.-(1) No moneys shall be withdrawn from the Consolidated Fund unless they are - 20

- (a) charged on the Consolidated Fund;
- (b) authorised to be issued by a Supply or Supplementary Supply law;
- (c) authorised to be issued by a resolution passed by Parliament under Article 148B with which the President concurs; or 25
- (d) authorised to be issued by the Minister responsible for finance under Article 148B (4). 30

(2) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by law.

(3) Clause (1) shall not apply to any such sums as are mentioned in Article 147 (2) (*b*) (i), (ii) or (iii). 35

(4) No moneys in the Development Fund shall be withdrawn -

(a) except for any one or more purposes specified in any written law, being purposes necessary or related to the development of Singapore; and

(b) unless authorised to be issued by a Supply or Supplementary Supply law or by the Minister responsible for finance under Article 148B (4).

Annual
estimates
and financial
statements.

147.-(1) The Minister responsible for finance shall, before the end of each financial year, cause to be prepared annual estimates of revenue and expenditure of Singapore during the succeeding financial year which, when approved by the Cabinet, shall be presented to Parliament.

(2) The estimates of expenditure shall show separately —

(a) the total sums required to meet expenditure charged on the Consolidated Fund;

(b) the sums respectively required to meet the heads of other expenditure for the public services proposed to be met from the Consolidated Fund, except the following sums:

(i) sums representing the proceeds of any loan raised by the Government for specific purposes and appropriated for those purposes by the law authorising the raising of the loan;

(ii) sums representing any money or interest on money received by the Government subject to a trust and to be applied in accordance with the terms of the trust; and

- (iii) sums representing any money held by the Government which has been received or appropriated for the purpose of any trust fund established by or in accordance with any written law; and 5
 - (c) the sums respectively required to meet the heads of expenditure proposed to be met from the Development Fund. 10
- (3) The estimates of revenue to be shown in the estimates shall not include any sums received by way of zakat, fitrah and baitulmal or similar Muslim revenue. 15
- (4) The Minister responsible for finance shall also present to Parliament together with the estimates of revenue and expenditure -
 - (a) a statement whether the annual estimates of revenue and expenditure is likely to draw on the reserves which were not accumulated by the Government during its current term of office; and 20 25
 - (b) an audited statement showing as far as practicable the assets and liabilities of Singapore at the end of the last completed financial year.
- (5) The Minister responsible for finance shall, as soon as practicable after the end of every financial year, prepare in respect of that year - 30
 - (a) in relation to accounts maintained in respect of the Consolidated Fund, a full and particular account showing the amounts actually received and spent in that year, and a full and particular statement showing receipts and expenditure of any loan moneys; 35 40

(b) a statement of receipts and expenditure of moneys accounted in the Development Fund Account;

(c) a statement of receipts and expenditure of moneys accounted in any Government fund created by any law;

(d) so far as is practicable, a statement of the assets and liabilities of Singapore at the end of the financial year;

(e) so far as is practicable, a statement of outstanding guarantees and other financial liabilities of Singapore at the end of the financial year; and

(f) such other statements as the Minister may think fit,

and, after the accounts and statements referred to in this clause have been audited, present to the President those audited accounts and statements together with another statement stating whether the audited accounts and statements referred to in this clause show any drawing on or likelihood of drawing on the reserves of the Government which were not accumulated by the Government during its current term of office.

148.-(1) The heads of expenditure to be met from the Consolidated Fund and Development Fund (other than statutory expenditure and expenditure to be met by such sums as are mentioned in Article 147 (2) (b) (i), (ii) or (iii)) shall be included in a Bill to be known as a Supply Bill, providing for the issue from the Consolidated Fund and Development Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(2) Wherever -

(a) any moneys are expended or are likely to be expended in any financial year upon any service or purpose which are in excess of the sum provided for that service or purpose by the Supply law relating to that year; or

(b) any moneys are expended or are likely to be expended (otherwise than by way of statutory expenditure) in any financial year upon any new service or purpose not provided for by the Supply law relating to that year, 5

supplementary estimates (or, as the case may be, statements of excess) shall be prepared by the Minister responsible for finance and, when approved by the Cabinet, shall be presented to and voted on by Parliament; in respect of all supplementary expenditure so voted the Minister responsible for finance may, at any time before the end of the financial year, introduce into Parliament a Supplementary Supply Bill containing, under appropriate heads, the estimated sums so voted and shall, as soon as possible after the end of each financial year, introduce into Parliament a Final Supply Bill containing any such sums which have not yet been included in any Supply Bill. 10 15 20

(3) The part of any estimates of expenditure presented to Parliament which shows statutory expenditure shall not be voted on by Parliament, and such expenditure shall, without further authority of Parliament, be paid out of the Consolidated Fund. 25

(4) For the purposes of this Article, "statutory expenditure" means expenditure charged on the Consolidated Fund or on the general revenues and assets of Singapore by virtue of Articles 18, 22J (3), 35 (10), 41, 42 (3), 108 (1), 114, 148E and 148F (4) or by virtue of the provisions of any other law for the time being in force in Singapore. 30 35

Withholding
of assent
to Supply
Bill, etc.

148A.-(1) The President may, acting in his discretion, withhold his assent to any Supply or Supplementary Supply Bill for any financial year which, in his opinion, is likely to draw on the reserves which were not accumulated by the Government during its current term of office, except that if the President assents to any such Bill notwithstanding his opinion that the Bill is 40

likely to so draw on those reserves, he shall state his opinion in writing addressed to the Speaker and shall cause his opinion to be published in the *Gazette*.

(2) If the President withholds his assent to any Supply or Supplementary Supply Bill relating to any financial year and no resolution to overrule the President is passed by Parliament under Article 148D within 30 days of such withholding of assent, Parliament may by resolution authorise expenditure or supplementary expenditure, as the case may be, (not otherwise authorised by law) from the Consolidated Fund and Development Fund during that financial year:

Provided that -

(a) where the President withholds his assent to a Supply Bill, the expenditure so authorised in addition to any amount authorised under Article 148B (4) for that financial year shall not exceed the amount voted for that service or purpose in the Supply law or Final Supply law (if any) for the preceding financial year; or

(b) where the President withholds his assent to a Supplementary Supply Bill, the expenditure so authorised for any service or purpose shall not exceed the amount included in the Supplementary Supply Bill to replace any amount advanced from any Contingencies Fund under Article 148C (1) for that service or purpose.

(3) Upon the passing of a resolution under clause (2) following the withholding of assent by the President to a Supply Bill relating to a financial year, the Supply or Final Supply law of the preceding financial year shall be deemed to authorise the issue from the Consolidated Fund and Development Fund such sums stated in the law to meet the expenditure for the financial

year to which the resolution relates, and shall have effect as the Supply or Final Supply law for that financial year.

(4) In forming his opinion under clause (1) in relation to any Supplementary Supply Bill, the President shall not have regard to any amount for any service or purpose included in the Supplementary Supply Bill which is to replace any amount advanced from any Contingencies Fund under Article 148C (1).

(5) For the purposes of this Article and Article 148D, where, on the expiration of 30 days after a Supply Bill or Supplementary Supply Bill has been presented to the President for his assent, the President has not signified the withholding of his assent to the Bill, the President shall be deemed to have given his assent to the Bill and the date of such assent shall be deemed to be the day immediately following the expiration of the said 30 days.

Power to
authorise
expenditure
on account,
etc., or for
unspecified
purposes.

148B.-(1) Subject to clause (3), Parliament may, by resolution approving estimates containing a vote on account, authorise expenditure for part of any year before the passing of the Supply law for that year, but the aggregate sums so voted shall be included under the appropriate heads, in the Supply law for that year.

(2) Subject to clause (3), Parliament may, by resolution approving a vote of credit, authorise expenditure for the whole or part of the year, otherwise than in accordance with Articles 147 and 148, if, owing to the magnitude or indefinite character of any service or to circumstances of unusual urgency, it appears to Parliament desirable to do so.

(3) No resolution of Parliament made under clause (1) or (2) shall have effect unless the President, acting in his discretion, concurs therewith.

(4) If no Supply Bill has become law by the first day of the financial year to which it relates

(whether by reason of the President withholding his assent thereto or otherwise), the Minister responsible for finance may, with the prior approval of the Cabinet, authorise such expenditure (not otherwise authorised by law) from the Consolidated Fund, Development Fund or other Government fund as he may consider essential for the continuance of the public services or any purpose of development shown in the estimates until there is a supply law for that financial year:

Provided that the expenditure so authorised for any service or purpose shall not exceed one-quarter of the amount voted for that service or purpose in the Supply law for the preceding financial year.

Contingencies
Funds.

148C.-(1) The Legislature may by law create a Contingencies Fund each for the Consolidated Fund and for the Development Fund and authorise the Minister responsible for finance to make advances from the appropriate Contingencies Fund if -

(a) he is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or no sufficient provision has been made by a Supply law; and

(b) the President, acting in his discretion, concurs with the making of such advances.

(2) Where any advance is made by virtue of the authority conferred under clause (1), a supplementary estimate of the sum required to replace the amount so advanced shall, as soon as practicable, be presented to and voted on by Parliament and the sum shall be included in a Supplementary Supply Bill or Final Supply Bill.

Parliament
may overrule
President's
withholding
of assent to
Supply Bill,
etc.

148D.-(1) Where the President withholds his assent under Article 148A to any Supply or Supplementary Supply Bill relating to any financial year contrary to the recommendation of the Council of Presidential Advisors, Parliament

may by resolution passed by not less than two-thirds of the total number of the members of Parliament overrule the decision of the President.

(2) Upon the passing of a resolution under clause (1), the assent of the President shall be deemed to have been given on the date of the passing of such resolution. 5

Debt charges
and moneys
required to
satisfy
judgments.

148E.-(1) The following are hereby charged on the Consolidated Fund: 10

- (a) all debt charges for which the Government is liable; and
- (b) any moneys required to satisfy any judgment, decision or award against the Government by any court or tribunal. 15

(2) For the purposes of this Article, "debt charges" includes interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby. 20

Appoint-
ment of
Auditor-
General

148F.-(1) There shall be an Auditor-General who shall be appointed by the President in accordance with the advice of the Prime Minister unless the President, acting in his discretion, does not concur with that advice. 25

(2) The Prime Minister shall, before tendering any advice under clause (1), consult the Chairman of the Public Service Commission. 30

(3) It shall be the duty of the Auditor-General to audit and report on the accounts of all departments and offices of the Government, the Public Service Commission, the Legal Service Commission, the Education Service Commission, the Police and Civil Defence Services Commission, the Supreme Court, all subordinate courts and Parliament. 35

(4) The Auditor-General shall perform such other duties and exercise such other powers in 40

relation to the accounts of the Government and accounts of other public authorities and other bodies administering public funds as may be prescribed by or under any written law.

5 (5) Subject to the provisions of this Article, the Auditor-General shall hold office until he attains the age of 55 years:

10 Provided that the President, acting in his discretion, may, if he concurs with the advice of the Prime Minister, permit an Auditor-General who has attained the age of 55 years to remain in office for such fixed period as may be agreed between the Auditor-General and the Govern-
ment.

15 (6) A person who has held office as Auditor-General shall not be eligible for any other appointment as a public officer.

20 (7) The Auditor-General may at any time resign his office by writing under his hand addressed to the President.

25 (8) The Auditor-General may be removed from office by the President, if the President concurs with the advice of the Prime Minister, but the Prime Minister shall not tender such advice except for inability of the Auditor-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and except with the concurrence of a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court nominated for that purpose by the Chief Justice.

30 (9) The tribunal constituted under clause (8) shall regulate its own procedure and may make rules for that purpose.

35 (10) Parliament shall by law provide for the remuneration of the Auditor-General and the remuneration so provided shall be charged on the Consolidated Fund.

40 (11) The remuneration and other terms of service of the Auditor-General shall not be

altered to his disadvantage during his continuance in office.

Duty to inform President of certain transactions.

148G.-(1) It shall be the duty of 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 the reserves of the Government which were not accumulated by the Government during its current term of office.

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(2) Where pursuant to clause (1) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the proposed transaction.

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Publication of President's opinion regarding certain liabilities of the Government.

148H. Where the President considers that certain liabilities of the Government, though not requiring his approval, are likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office, he shall state his opinion in writing to the Prime Minister and shall cause the same to be published in the *Gazette*."

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Amendment of Article 150.

21. Article 150 of the Constitution is amended -

- (a) by inserting, immediately after the words "of this Constitution" in the fifth and sixth lines of clause (4), the words "(except Articles 22E, 22H, 144 (2) and 148A)"; and
- (b) by deleting the words "the provisions of this Constitution relating to religion, citizenship or language" in clause (5) (b) and substituting the words

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- (i) Article 5 (2A);
- (ii) the provisions of this Constitution specified in Article 5 (2A) conferring discretionary powers on the President; and
- (iii) the provisions of this Constitution relating to religion, citizenship or language".

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Amendment of Article 151.

22. Article 151 of the Constitution is amended by inserting, immediately after clause (3), the following clause:

"(4) Where an advisory board constituted for the purposes of this Article recommends the release of any person under any law or ordinance made or promulgated in pursuance of this Part, the person shall not be detained or further detained without the concurrence of the President if the recommendations of the advisory board are not accepted by the authority on whose advice or order the person is detained."

23. The Constitution is amended by inserting, immediately after Article 154, the following Article:

New Article
154A.

Exemption. 154A. The President, acting in his discretion, may by order in the *Gazette*, exempt any transaction or class of transactions, from the application of Article 144."

24. The First Schedule to the Constitution is amended -
(a) by deleting the form of oath for the office of the President and substituting the following form of oath:

Amendment
of First
Schedule.

"I,
having been *elected/appointed to exercise the functions of the President of the Republic of Singapore, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability without fear or favour, affection or ill-will, and without regard to any previous affiliation with any political party, and that I will bear true faith and allegiance to the Republic, and that I will preserve, protect and defend the Constitution of the Republic of Singapore."; and

(b) by inserting at the end thereof the following form of oath:

"8. *Oath of Secrecy of Chairman or Member of Council of Presidential Advisors.*

I,, having been appointed to be *Chairman/a Member of the Council of Presidential Advisors do solemnly swear (or affirm) that I will not directly or indirectly reveal any matter considered in the Council to any unauthorised person or otherwise than in the course of duty."

New Fifth
schedule.

25. The Constitution is amended by inserting,
immediately after the Fourth Schedule, the following Sched-
ule:

"FIFTH SCHEDULE

(Articles 22A and 22C) 5

KEY STATUTORY BOARDS AND
GOVERNMENT COMPANIES

PART I.

- 1. Board of Commissioners of Currency, Singapore.
- 2. Central Provident Fund Board. 10
- 3. Housing and Development Board.
- 4. Jurong Town Corporation.
- 5. Monetary Authority of Singapore.
- 6. Post Office Savings Bank of Singapore.

PART II. 15

- 1. Government of Singapore Investment Corporation Pte. Ltd.
- 2. MND Holdings Pte. Ltd.
- 3. Singapore Technologies Holdings Pte. Ltd.
- 4. Temasek Holdings Pte. Ltd."

Transitional
provisions.

26.-(1) The person holding the office of President 20
immediately prior to the commencement of section 4 of this
Act shall continue to hold such office for the remainder of
his term of office and shall exercise, perform and discharge
all the functions, powers and duties conferred or imposed
upon the office of President by the Constitution as amended 25
by this Act, as if he had been elected to the office of
President by the citizens of Singapore, except that if that
person vacates the office of President before the expiration
of his term of office, a poll shall be conducted for the
election of a new President within 6 months from the date 30
the office of President became vacant.

(2) This Act shall not affect the appointment of any
person made before the commencement of section 4 of this
Act and that person shall continue to hold his office as if he
had been appointed in accordance with the provisions of the 35
Constitution as amended by this Act.

(3) The Constitution as amended by this Act shall have effect subject to the following modifications:

(a) the initial term of office of the Government shall be the period beginning from the date of commencement of section 2 of this Act and ending on the date immediately before the Prime Minister and Ministers first take and subscribe the Oath of Allegiance in accordance with Article 27 of the Constitution after the first general election following such commencement;

(b) Articles 22B and 22D of the Constitution shall apply from the first financial year of a statutory board or Government company beginning not less than 3 months after the commencement of section 4 of this Act;

(c) in relation to the first financial year of a statutory board or Government company beginning not less than 3 months after the commencement of section 4 of this Act, any reference in Articles 22B and 22D of the Constitution to the approved budget of the preceding financial year of the statutory board or Government company shall, in the absence of such a budget, be read as a reference to the budget of that preceding financial year; and

(d) Article 148A of the Constitution shall apply in respect of the first financial year of the Government beginning on or after the commencement of section 20 of this Act as if the resolution of Parliament authorising expenditure from the Development Fund for the preceding financial year forms part of the Supply or Final Supply law for such preceding financial year.

**LIST OF INDIVIDUALS AND ORGANISATIONS
FROM WHOM WRITTEN REPRESENTATIONS WERE RECEIVED
BY THE SELECT COMMITTEE**

Those marked * were invited to appear before the Committee

Paper No. Representor

1	Mr Chia Yak Cher
2	Mr Chia Hern Keng
3	Mr Kew Kah Fatt
4	Mr Malcolm Pereira
5	Encik Hj Ayub bin Ismail
6	Mr Ronald Naidu
7	Dr R C Cooper
8	Mr Augustine Lee
9*	Mr Shriniwas Rai
10*	Mr Kenneth Chew
11	Mr Lee Boh Ang
12*	Mr Vincent Tay Shian Poh
13*	Mr Wee Han Kim
14	Dr Chee Soon Juan
15	Mr Philip Teo Chwee Lock
16	Mr Wong Hong Toy
17	Workers' Party
18	Ms Zaibun Siraj
19	Mr Cherian George
20	National University of Singapore Students' Political Association
21*	National University of Singapore Law Club
22	Mr Yap Neng Pin
23	Mr Chen Wei Ching
24*	National University of Singapore Democratic Socialist Club
25	Mr Winston Yap

Paper No. Representor

26*	Mr Walter Woon
27*	Institute of Certified Public Accountants of Singapore
28*	Assoc Prof Valentine S Winslow
29	Mr Manuel J Pakianathan
30	Mr Dennis Singham
31*	The Law Society of Singapore
32	Mr A L Sundram
33	Mr Lim Kwang Liang
34	Mr Khong Leong Tuck (Late representation)

APPENDIX III

WRITTEN SUBMISSIONS OF REPRESENTORS FROM WHOM ORAL EVIDENCE WAS HEARD BY THE SELECT COMMITTEE

<i>Representors</i>	<i>Paper</i>	
	<i>No.</i>	<i>Pages</i>
Mr Shriniwas Rai	9	B 2- 6
Mr Kenneth Chew	10	B 7-10
Mr Vincent Tay Shian Poh	12	B 11-16
Mr Wee Han Kim	13	B 17-19
National University of Singapore Law Club	21	B 20-29
National University of Singapore Democratic Socialist Club	24	B 30-35
Mr Walter Woon	26	B 36-39
Institute of Certified Public Accountants of Singapore	27	B 40-50
Assoc Prof Valentine S. Winslow	28	B 51-57
Law Society of Singapore	31	B 58-73

Paper 9

From: Mr Shriniwas Rai,
Hin Rai & Tan,
No. 2 Finlayson Green #07-05,
Asia Insurance Building,
Singapore 0104.

Dated: 25th October 1990

THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

1. The Elected Presidency has occupied the mind of the public and the press for over 5 years. It has taken even longer time, 8 years, for the leaders to think and come out with the proposals that will strengthen our structure of Government. In between, there has been two White Papers, two debates in Parliament, feedback session, newspaper discussion and finally this Select Committee will ensure the public view is fully reflected in the new Constitutional amendment.

2. The Bill is carefully thought out and drafted. It aims to safeguard our national reserves and the integrity of our civil service. It has gone further and created another tier of check and balance in some important area of executive. I need not elaborate this.

3. Whilst studying the Bill my mind went back in 1986 when the Prime Minister spoke in the Parliament.

"I think Singaporeans, by and large, do know. There are \$27 billion in the official reserves. There are other assets in buildings, lands, and other investment, so much so that we think it deserves a double lock. Ten years, or five years of government of the nature that we have seen elsewhere, we will be in debt. \$27 billion in the Philippines, currency devalued every few weeks, larder empty, and "People's Power" cannot bring back the money, nor will it in a hurry rebuild the quality of their administration, its integrity, its effectiveness, its impartiality. I am unrelenting in my defence of the integrity of the officials, especially those on the Public Service Commission and on the Judicial Service Commission, because without that, the system must malfunction."

The Prime Minister graphically sketched the need for the Bill. Since he spoke more governments have suffered from financial mismanagement. It is best to leave their names unmentioned.

4. I support the Bill in principle although I have some specific proposals. We have everything to gain and nothing to lose. If our reserve were depleted our dollar will go down and as we import all our daily needs a weak dollar means a lower standard of living.

5. There seems to be the view by some Members of Parliament as well as members of the public that there ought to be a Referendum to amend the Constitution. Perhaps they fail to appreciate the concept of Referendum. A referendum is only held where there are some other alternatives, and there is constitutional necessity.

6. Let me examine the Constitutional position of this Bill. Before I examine our Constitution let me give the view of a leading Constitutional law scholar, De Smith in his Constitutional and Administrative Law has this to say on the Constitutional amendment:-

"Procedures for constitutional amendment differ widely from one another, but they usually require the amending measure to be passed by special majorities in the Legislature, or to be submitted to the people voting at a referendum, or both. It is perfectly possible, and is indeed not uncommon nowadays, for various provisions of a constitution to be alterable in different ways; some may be alterable by an ordinary legislative enactment, and other 'entrenched' at various levels against legislative encroachments, depending on the degree of importance originally attached to particular parts of the constitution."

The quotation is from 4th Edition Page 18 of the book.

7. Article 4 of the Constitution of Singapore says that the Constitution is the supreme law of the Republic of Singapore. It goes further and says that "any law enacted by the Legislature after the commencement of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."

8. The Constitution may be amended in the manner provided under Article 5 (i) of the Constitution. Only when Part III of the Constitution is amended a Referendum is required. It deals with protection of the sovereignty of the Republic. The Bill before this Committee does not require Referendum.

9. Some cite the merger with Malaysia as a precedent for Referendum. When Referendum on the merger was held it was to decide which of the 3 choices the people preferred. The Legislature had approved merger in principle and the only question was which of the 3 choices the people preferred. The other reason was that the Legislature then was not the Sovereign Legislature. This is why the Malaysians did not have to go to Referendum when they joined Singapore under the merger.

10. Having dealt with the legal issue, let me deal with the moral aspect. The elected Presidency became an issue in the last general election. The Opposition asked the people to deny two-third majority but the ruling party won all but one seat. The people have resoundingly approved the proposal. There is no alternative either for better or worse. In passing I would say that in a country like India several Constitutional amendments were made without any referendum. Privy purse and nationalisation of the banks, are cases on point.

11. In my opinion Parliament could have amended the Constitution giving the President extra power without asking for election of the President. This added feature of election has added some element of excitement, as all elections do.

12. The election was introduced to give the people the choice. It aims to give the President the moral authority, the mandate from the people. I have a faint feeling that some of the citizens critical of the proposal have not read fully the White Papers, the Bill and the Constitution. They may have read one but not the other, or worse still may have not read at all.

13. Having disposed the Constitutional and political grounds, let me give, my other grounds. This Select Committee offers an opportunity for the public to offer their views which could never be, done in any Referendum. To those who find fault in the Bill they have the right to go before the Select Committee and offer their suggestions. In the past Select Committee has amended Bills to reflect proposals put up by the public, even proposal from the Opposition. There will be a small sector of the society which will find fault with anything good or bad.

14. By this amendment are we abandoning Westminster's model? The answer is no. The President will not appoint or initiate any policy. This will be in the hands of the Executive. The power of the Executive is spelt out in Chapter 2 of Part V of the Constitution. This Chapter remains unaltered. Article 24 reads:

"There shall be in and for Singapore a Cabinet which shall consist of the Prime Minister and such other Ministers as may be appointed in accordance with Article 25.

Subject to the provisions of this Constitution, the Cabinet shall have the general direction and control of the Government and shall be collectively responsible to Parliament." (emphasis added).

15. What will happen is that the Executive will have to act in areas of finance and appointment of civil servants carefully so that it does not receive the veto of the President. If the choice of the Executive is a sound one there should be no fear that the President is going to veto it. In any case if the President veto appointments without due consideration then he will lose the confidence of the people as well as the Executive. Put simply the Prime Minister will initiate executive and legislative action. The President cannot do so. He will not make the choice, the Prime Minister will.

16. The additional power that is given to the President under the ISA and Maintenance of Religious Harmony Act and CPIB is to be welcomed. The citizens will have protection which did not exist before. The Executive would have to think carefully. Even in the above cases, the President acts as a check and balance. He cannot act on his own. In the case of Maintenance of Religious Harmony Bill if the Minister and the Presidential Council both agree on the detention order the President cannot veto it. Put simply, the President will act as a safeguard against the Executive excess. He will not initiate action. Let me now deal with my proposal.

PROPOSALS

President to be non-partisan

17. The President is the symbol of the nation's unity. We owe our allegiance to him. Any move to add power to his prestige would be welcomed by the people. My appeal is that he should be above party politics for once he accepts the office he ought to be regarded as non-partisan. He must cut off his political ties. I would favour that the Presidential election be confined to campaign by media. Let us not bring big finance into play. Some guidelines could be set by the Committee.

Qualifications

18. (a) The proposal under Clause 18 (3) is narrow. It should include Ambassadors, Vice-Chancellors, Solicitor-General, the Registrar of Supreme Court and the Clerk of Parliament. Whilst I favour high standard, I think we should be ample in the qualifications. My other observation is that the experience of 3 years is too short a period.

(b) There is also misconception in some sector that the conditions are very stringent. Clause 18 (2) (c) has not been fully discussed. It allows and gives the presidential election committee power to appoint anybody who in their opinion is capable of discharging the function of the President.

(c) My other reservation is that the decision of this Committee should not be litigated and it should be made of men who themselves must have the qualifications to be potential presidential candidate.

(d) I would like the President to be a citizen who can discharge his duty with distinction. There should also be a minimum age limit, as in the Presidential Council for Minority Rights. I am reminded of Hindi saying that age and experience are themselves education.

Emergency Power

19. As to the emergency power, I believe that it should be left to the Executive, and not to the President. I have maintained in earlier Select Committee that the Minister must have the final say when security of the state is in question. I need not labour this point in detail.

Council of State

20. The Presidential Council of Advisor should be upgraded. It should act as an advisory body. This body could act as the Upper House, save that it should have no legislative power. We can mould it in such a way that our Parliament shall remain unicameral. This body can act as a de facto Upper House. It could be called, the Council of State. Its members should be increased to 15. For the present I would prefer 7 to 9 members. Membership to this body should have a very stringent condition and spelt out in the Constitution. This body should be made of people from various discipline like accountancy, banking, finance, judiciary, trade, and trade union. It could be our Council of the Elders. I have pleaded for this body in earlier Select Committee on NMPs.

TAXATION

21. (a) The proposed Article 143 in Part XI of the Constitution which reads: -
"No tax or rate shall be levied by, or for the purposes of, Singapore except by or under the authority of law."

My proposal is to include variation or reduction of any tax or rate. I am fortified in my view after reading the White Paper which states: -

"If a Government increases its expenditures without increasing taxes, or reduces taxes without cutting back benefits or programmes, its budget will soon run into deficit. It will then need to borrow money, print money, or draw down the reserves."

- (b) The Clause as it stand would seem to give the Government the power to reduce or waive tax. A reckless Government towards the tail end of its term of office, could do this to the detriment of the State.

GRC

22. As to the Clause 7 I would prefer that instead of 4, the maximum members of the candidates should be 5. This would cover for any increase in the population. Furthermore it does not prevent nominating 3 or 4 candidates. It give more flexibility.

23. When I appeared before the Select Committee on the GRC I had some reservation on the GRC. But having seen its work I hope one day the leaders would introduce it to the whole nation. We are a small nation. Too many constituencies seem to favour artificial division. I would plead for the Republic to be divided into the 18 GRC and each GRC to have a Town Council with the MP acting as Mayor, but without mace.

24. The Town Council should include both public and private housing estates. This will ensure full participation and the Town Councils could become a local body where municipal issues could be debated and the public could participate in this and eventually from some of the Town Councils we may have Members of Parliament and Ministers in the making.

25. A Constitution is not a document writ in stone. It must reflect our national needs. When anti-defaction clause was put into the Constitution there was criticism, now other countries are following. We must modify the Westminster model to suit our needs.

Paper 10

From: Mr Kenneth Chew,
22 Jalan Kelawar,
Singapore 1024.

Dated: 25th October 1990

THE ELECTED PRESIDENT BILL

In the interest of the nation, may I make my observations/suggestions on the above bill for your kind attention. The bill as it stands has too many weaknesses.

1. INTRODUCTION

The duties of President as proposed in the above Bill although passive in nature wields wide sweeping powers to check on the Government of the day.

As such it is imperative that the Elected President have all the necessary qualities such as status to command respect from all citizens besides his other technical skills and statesmanship, etc.

2. ARTICLE 2(e)

The definition "reserves" should be changed to mean the excess of tangible assets over liabilities.

3. ARTICLE 19(3)

I would like to propose that all Ministers, and civil servants of Permanent Secretaries levels who have at least five years experience be eligible to be candidates. Besides these, all citizens who have been approved by the Election Committee as having the necessary qualifications and experience are qualified to be candidates.

I would also like to suggest certain pre-requisites such as:

- (a) Singaporeans not younger than 50 years of age and not older than 65 years unless the Elected Committee agrees otherwise.
- (b) The term of office of Presidency to be restricted to 2 terms of 6 years each. This is to provide avenue for grooming of a successor.
- (c) I agree with the other pre-requisites of Articles 18 and 19.

4. ARTICLE 20(e)

I have reservations of the need of the President to bring himself to that level of supervision and dignity. There could be built into the M & A of the Government companies to vest the powers in a Committee with the added safeguards of having the Auditors' General's office doing a special audit on these companies and report to the Presidential Council of Advisors on a regular quarterly basis every each year.

Besides if it relates to public companies then the Companies Act should also apply.

5. ARTICLE 22(4)

The reserves of \$100 million may be insufficient where the capital paid-up is much larger. I would think the question of total tangible assets would be of more importance, say \$1/2 billion.

6. ARTICLE 22(b)

(1) - What is the rationale behind this check? Doesn't the Companies Act has sufficient checks and balances?

(4) - How do you determine the quantum? Is it based on par value, market value or net asset value? This needs to be clearly defined.

What happens where the officers/executives of statutory board/companies act *contrary to instructions* and in breach of the law. Thus the question of penalty must be spelt out for such breaches.

7. ARTICLE 22(e)

What happens if information are not given to the President or inaccurate information purposely given to him. Thus the question of penalty must be spelt out for such breaches to ensure compliance.

8. ARTICLE 22(m)

(1) and (2) should be deleted. I would like Parliament to consider the appointment of one of the Presidential Advisors instead. This is because, in terms of experiences they would be the logical ones to succeed.

All the nominees to be made known to the public and subject to scrutiny by the public (by written submission) for one month from the time of nomination before being appointed.

37d(b) - 35 years of age too young. Should be 50 years or above.

37(j) - What is the rationale behind the objection to the Council to hear objectors or examine witnesses?

9. ARTICLE 65

I would like to propose additional powers be given to the President:

- (a) Authority to over-ride the Prime Minister and insists on holding of election where in his opinion any deferment is unjustified.
- (b) Not to approve the re-drawing of election boundaries where it leads to unfair selection - jerrymandering.
- (c) To sack the Prime Minister and dissolve Parliament and call for fresh election if the Prime Minister refuses to do so when his terms of office expires or under conditions which warrants it.

10. ARTICLE 71

(b) - To be deleted and substituted as 50 years of age. Is this Council under Articles 69-92 the same Council as Part VA?

11. ARTICLE 95

This article to be amended as follows:

- (a) The Chief Justice and other judges of the Supreme Court shall be appointed by the President if he is acting in his discretion, concurs with the advice of the Prime Minister.
- (b) Before (a) the Prime Minister shall submit the candidate (s) to the Committee consisting of 5 eminent lawyers appointed by the Law Society who shall scrutinise the background of the candidate(s) as to his/her suitability, independency, integrity, honesty and moral conducts.
- (c) The findings and recommendations shall then be made available to the Prime Minister and President for their considerations and confirmation.

12. ARTICLE 98

(1) - To be amended "death or until he attains the mandatory age of 65 years of such later time not being later than 6 months after attaining the age whichever is the later. He shall not be entitled to any extension of office whatsoever."

(7) - Other than their extension of office after reaching the mandatory retirement age of 65 years as provided in (1) above.

13. ARTICLE 144(3)

What if the Public Officer(s) on instruction of the Government does not inform the President? Therefore there must be penalty to deal with this. The quantum should fit the severity of the offence.

To police and ensure that there are no breaches the Auditor-General must give a copy of the report in details to the President through the Presidential Advisors.

Thus (3) to include 3 (a) as follows:

"Every Public Officer who fails to carry out his/her duties under Part XI either by giving false information or deliberately withholding information to the President shall be guilty of an offence."

14. BUDGET OF THE GOVERNMENT

Besides the budget announced in Parliament in March each year by the Finance Minister, the Finance Minister shall present to Parliament in September

each year a progress report of the performance of the ensuing half year of the state of affairs of the nation.

Where there is shortfalls in the annual budget, any need to seek further approval from Parliament/President for extra funds etc, or to curtail expenditure for the second half of the year.

Otherwise the functions of Government could be disrupted due to shortage of funds to run the Government at the closing months of the budget year.

I shall be happy to appear before the Committee to clarify and explain the rationale of my proposals.

I sincerely urge the Committee to consider seriously as sufficient checks and balances are necessary to ensure that the fruits of past generations are not squandered easily by a corrupt and unscrupulous future Government.

Thank you for the opportunity of putting my proposals for your considerations.

Paper 12

From: Mr Vincent Tay Shian Poh
466 Siglap Road, #01-01
Singapore 1545

Dated: 24th October 1990

INTRODUCTION

The Constitution of Singapore is based on the 'Westminster Model'; executive power is vested in the Cabinet presided over by the Prime Minister (*Art. 24*). The President is merely a constitutional Head of State who is appointed and who acts on the advice of the Cabinet (*Art. 25*).

The Bill proposes fundamental changes to our current parliamentary system of government. It envisages an Elected President (EP) with blocking powers in certain key areas of government; whilst the President is not invested with executive power, he nevertheless has the authority to prevent certain executive actions from having legal effect.

ENTRENCHMENT

Cl.3 of *The Bill* proposes that *Art. 5* be amended. The new *Cl.2A* provides that any Bill seeking to amend the powers accorded to the EP would need the ratification of two-thirds of the electorate through a referendum. The clause, however, has a proviso that eliminates the need for a referendum should the President "in his discretion" decide otherwise.

It is submitted that proviso serves no purpose. There is no conceivable reason for an EP to accede to a dilution, let alone a total eradication of his powers.

Secondly, the rationale behind the implementation of the institution is to provide a check on what the government has itself termed its "unbridled legal powers" to freely spend the country's financial reserves or to practice nepotism in its public sector appointment. The EP's role is therefore a very important one. The government itself must think so, otherwise it would not have proposed an institution that limits its own powers. The proviso therefore poses an unfortunate conceptual contradiction. It might give rise to suspicions that the government does not intend for the institution to provide an effective check, and thus be interpreted as a political ploy.

Thirdly, the proviso should not be included because it allows the EP to accept, solely in his discretion, a reduction in or total surrender of, his important veto powers which would bind future Presidential incumbents. This, it is submitted, provides too great and arbitrary a power in the President's hands. The fact remains that the President's sole role is to provide a check on governmental powers. He is elected into office precisely for this purpose. He therefore has not the moral authority to agree to a removal or reduction in his checking powers.

Fourthly, the 'first past the post' method used in the Presidential elections implies that a candidate might well get into office with less than fifty percent of the popular vote (*eg* in an election with three or more candidates). Such a President would also not have the moral authority to agree to reductions in his powers.

Lastly, it would be an anomaly to provide for such stringent means for amendment to the institution (by means of a referendum) and yet provide for its establishment by simply passing this Bill in Parliament.

It is submitted for the above reasons that *Cl.3* of *The Bill* should be repealed. Instead, the EP should be entrenched in *Part III* of the constitution (as was previously proposed in the 1988 White Paper); any amendment to his powers must, by virtue of *Art. 8*, be put to a referendum.

The government acknowledged in the 1989 White Paper that the situation could arise where a Supply Bill that the government is adamant on passing is vetoed by the President, who has the CPA's support. It proposed to resolve the ensuing stalemate by bringing the issue to the people with a referendum to limit the President's powers. It is submitted that if such a situation should arise, the referendum should relate only to the Supply Bill. It is not necessary to make any changes to the institution, which took years to develop.

QUALIFICATIONS

Cl.4 of *The Bill* repeals the entire chapter on "The President". The *new Art. 17* provides for a 'Presidential Elections Committee' (PEC) to ensure that Presidential candidates have the "necessary experience and qualifications". The *new Art. 18* lists these qualifications.

It is submitted that the "necessary qualifications" of a Presidential candidate must conform with the rationale that he is to act as a check on governmental actions. This would mean that he has to be, above all, non-partisan and apolitical. The list in the *new Art. 18 (3)* restricts the office of President to people who have been at the highest echelon of the private and public sectors. For the EP to have the legitimacy and moral authority to carry out his functions as a blocking power, he must not only be, but be seen to be non-partisan. It is submitted therefore that former Ministers cannot be candidates to the post. Also, anyone who is a member of any political party must first resign from that party before he qualifies to be a candidate.

It is submitted that the list, if it is exhaustive, is too stringent. It not only encourages elitism but also restricts potentially able men from assuming the post of President. If the list can be interpreted to be a mere guideline, this would not make much difference. According to the Rules of *ejusdem generis*, the EPC would have to appoint candidates of equal standing.

Another problem arises with regard to the PEC. It is vested with the important task of selecting, apparently at its sole discretion, suitable Presidential candidates. There is, however, no indication as to the criteria for membership to the Committee. As argued above, the institution must be kept apolitical, Members of

the PEC must therefore not be members of any political party, nor should they be appointed by the government. Otherwise, the role of the EP as an effective check could be overridden by the ruling party. This creates a loophole that might lead to this worst-case scenario: the government practices nepotism and 'cronyism' by placing its own people in the PEC, who will in turn put up for nominations candidates who are government sympathisers. One of them gets voted in. This could result in the country being worse off than if it didn't have an EP. The EP acts as if he is checking the actions of the government but is actually aiding it to bankrupt the country.

It is submitted that the preferable method is to reduce the requirements necessary for candidate to that of either an MP (*Art 44 and 45*) or a member of the PCMR (*Art. 71 and 72*). This would not only benefit the country by enabling worthy citizens who do not meet the criteria on the qualifications list to run for President, it would also eliminate the need for the PEC and its attendant problems.

It is of interest to note that even in countries where the President is the effective Head of State (and whose powers are therefore far greater than the EP's), qualification for the post is relatively simple. The American Constitution provides that a candidate must be a citizen by birth, be thirty five years of age and be resident in the country for at least fourteen years. Kenya has basically similar provision, with the added criterion that a candidate must be a registered voter.

Lowering the criteria for candidacy, moreover, does not mean that poorly qualified individuals would end up as EP. The population of Singapore is highly educated and should be entrusted to vote in suitable people.

DISCRETIONARY POWERS

The EP's discretionary powers are listed out in the *new Art. 20*. It provides, in addition to the safeguarding of reserves and appointments to the civil service, checks in three new areas, namely detentions under the *ISA*, CPIB investigations and orders under the proposed *Maintenance of Religious Harmony Act 1990*.

It is submitted that the Presidential purview over *ISA* detentions is long due. The government obtained an unrestrained power to detain ever since the *ISA* was amended in 1989. The use of the subjective test in determining whether someone was a subversive led to fears of abuse of what many thought was an arbitrary power. *Cl. 22* amends *Art. 151* by inserting a new clause which provides that a person cannot be further detained without the President's concurrence if the advisory board recommends that the detainee be released.

It is submitted that the power given to the President is too limited. There is still too much power vested in the Minister because of the subjective test. The 1DPM himself said that a political body should be created to oversee *ISA* detentions, that judicial review was not the answer. The President, who is this political body, should be vested with the right to determine whether or not someone should be detained in the first place.

The Bill is also lacking with respect to CPIB investigations. The *new Art. 22F* provides for Presidential concurrence to override the PM's refusal to allow investigations into any matters concerning a Minister. It is submitted that the President's purview should be extended to include the PM himself and members of the public.

The EP is provided with powers to veto the budgets of statutory boards and government companies under the *new Art. 22A and 22C*. This implies that the privatisation of statutory boards (and there are plans to privatise TAS and the PUB) would require a referendum because it impinges on the power of the EP by virtue of the *new Art. 5(2A)*. It is submitted that privatisation should be made an exception to this clause.

It is submitted that *the Bill* should provide guidelines as to when a Supply Bill can draw down the country's reserves. If this is not so, the situation could arise where Singapore amasses huge sums of money which no one is allowed to benefit from.

VOID ELECTIONS

The *New Art. 22L(3)* states that in the event of a void election, the actions of the EP "shall not be invalid".

It is submitted that this clause creates any anomaly. The actions of a person who was not an EP because the elections were void cannot be allowed to take effect. The EP's role is an onerous one. He decides on very important measures. It would therefore be more prudent to provide that the new EP review the actions of the voided EP.

REMOVAL

The *new Art. 22K* provides for the removal of the EP. Apart from the normal grounds for the vacation of office (eg. death and resignation), the new *Cl. 4* provides for removal if "allegations of misconduct" have been proven. It is submitted that the ambit of what constitutes "misconduct" must be clearly delineated. The EP is not only the symbolic Head of State but is also the elected custodian of key public assets. Having obtained the peoples' mandate, the grounds for his removal must therefore be clearly stated, as are the grounds for the disqualification of MPs in *Art. 45*.

In Sri Lanka, the President may be removed on very specific grounds: physical infirmity, bribery, treason or misconduct (defined as the abuse of powers of his office) of any criminal offence. In the Federal Republic of Germany, the Federal President may be impeached only for wilful violation of the Constitution or any other federal law.

The clause also calls for a tribunal of five Supreme Court Judges to inquire into the allegations of misconduct and make a determination. Although their Lordships are perfectly qualified to make such determination, it is submitted that the involvement of judges in the matter might politicise the judiciary. The removal of

an EP is likely to be a highly politicised issue. A decision for the government (ie supporting the removal), no matter how just, may be interpreted as a 'towing of the party line'. Such an event must be avoided at all costs. The judiciary must not only be, but be seen to be independent. Only then would the public have confidence in the judiciary and the rule of law.

In America, an impeached President is sent before the senate; it is they who make the determination. Perhaps a way could be found to keep the judiciary out of our removal process. A special tribunal, headed by the Chief Justice, could be nominated or the CPA be used for this purpose.

VICE PRESIDENT

By virtue of the repealing and re-enactment of the chapter on "The President", there is no longer any provision for a VP. Instead, it is provided in the *new Art. 22M and N* that in the event of the vacation of the EP's seat, the CJ, or if he is unavailable, the Speaker is to take over his functions.

It is submitted that it is conceptually incorrect to provide for nominated persons to take over the post of an EP. They do not possess the mandate of the people. Moreover, the choice of CJ cannot be a correct one. The 1989 *ISA* amendments excluded detentions from judicial review. The CJ as acting EP might be hearing questions with regards to detentions, thus re-introducing judicial review through the back door.

It is therefore submitted that there should be an EP/VP team as envisaged in Cmd. 10 of 1988 (the qualifications needed being similar to that of EP's). The VP would be there to assist the EP in making important decisions. This would eliminate the fear that too much power rests in the hands of one man.

The *new Art. 22K(2)* provides that in the event of the vacation of the Presidential seat, elections are to be held within six months. It is submitted that the possible absence of an EP of up to a possible six months is dangerous. His functions are far too important to be placed in the hands of nominated men for such a long period of time. The presence of a VP would eliminate this problem.

COUNCIL OF PRESIDENTIAL ADVISORS

The Bill provides for a *new Part VA* in the constitution, establishing the CPA. It is to consist of six members, two appointed by the President, two by the PM and two by the chairman of PSC. Its function is to advise the EP and to make recommendations (*new Art. 371*). In the case of Supply Bills, the CPA must be consulted. The Advisors vote for or against the Bill and advise the President of the majority decision.

It is submitted that the CPA must consist of an odd number of members to prevent deadlocks. It could perhaps also be enlarged to offer a broader spectrum of views.

CONCLUSION

The Bill establishes a much needed institution in Singapore, one that will provide checks in key areas. This is especially important in a country which has through a quirk of history, developed into a one-party parliamentary system, where the powers held by the government are necessarily potent and far-reaching. The institution, once entrenched, would be very hard to alter. The government, therefore, must be very careful in implementing *The Bill*, which the 1DPM himself admits is still far from perfect. It is hoped that this representation contributes towards the eventual establishment of a smooth-running, effective institution.

Paper 13

From: Mr Wee Han Kim
1 Sophia Road #10-01
Singapore 0922

Dated: 24th October 1990

RE: SELECT COMMITTEE ON ELECTED PRESIDENCY BILL

In response to your invitation I make herewith my representations: -

1. CLAUSE 25(1): THE DEEMING PROVISION

The provision that the current non-elected President shall be deemed to be the Elected President until expiry contradicts the basic rationale of the Bill, that is to say, for the President to be elected by the people.

But for his high appointed office of President, the current President would not automatically be qualified for the elected presidency. The holding of the post of nominated President does not the more befit the holder qualification or experience wise because the duties of that office are largely ceremonial.

2. CLAUSE 18(2): NO AGE LIMIT

Clause 18(2) does not specify any age limit for the Elected President. I suggest a minimum of 45 and a maximum of 70 years as at date of nomination.

3. CLAUSE 19(1): TERM OF OFFICE

In my view a 6 year term is too long. One term should be between 4 or 5 years. It should not exceed 5 years.

4. LIMITED ON NUMBER OF TERMS

There is no limit on the number of terms for which an elected president can stand. I suggest a maximum of 2 terms.

5. CLAUSE 18: LADY PRESIDENT

Clause 18 seems to imply that the President shall be a man. It should be amended to make clear that women are not barred from this office.

6. SPOUSE OF ELECTED PRESIDENT

The spouse of the Elected President should not be gainfully employed or associated in any material way with any trade business or profession. This could be incorporated by a simple amendment to CLAUSE 18(4).

7. NON-PARTISAN PRESIDENT

There is no provision putting the Elected President above party politics. This is undesirable because if the Elected President is from the same party as the ruling party, then the likelihood of his being an effective check on the Government is very much reduced.

The existence of a partisan President with power over key public service appointments would be unhealthy for the body politic in the absence of any requirement that key appointees be non-partisan. In such a system there is nothing to prevent a partisan president appointing members of his own party to key positions. Such a system could also be an inducement for bright young men with ambitions to get to the top to join the same political party as the president.

For these reasons a requirement that the Elected President be non-partisan is recommended.

8. CLAUSE 20(2): VETO POWERS

The power to veto the appointment of Prime Minister and the dissolution of Parliament is too wide. It puts the Elected President in a position to prevent a change of Government and contradicts the statement in the White Paper of 1988 (quoted on page 9 of the White Paper 1990) to the effect that the Government can make an issue of any disagreement with the President by forcing a general election.

9. CLAUSE 21, 22 & 228: KEY APPOINTMENTS

The unrestricted power to veto the appointment of top civil servants, members of statutory boards and directors of government companies is equivalent to a power of appointment. The President can in effect say "I will refuse to concur in the appointment of anyone to the post except X".

It would be more reasonable to limit the President's power of refusal to say, two nominees. The President's unrestricted veto power also derogates from the power of patronage hitherto associated with the office of Prime Minister.

10. ACCOUNT OF RESERVES

Before every general election, the Government should be required to declare in detail the state of the reserves and the amount accumulated or spent during its previous term in office.

I am prepared to appear before the Select Committee if called upon.

From: Mr Wee Han Kim
1 Sophia Road #10-01
Singapore 0922

Dated: 29th October 1990

RE: SELECT COMMITTEE ON ELECTED PRESIDENCY BILL

Further to my representation of 24th October 1990, I wish to add as follows.

CLAUSE 22J: IMMUNITY FROM SUIT

In exchange for immunity from suit, there should be some limitation on the Elected President's freedom to sue, for example, his political opponents. In view of the President's absolute power to veto the appointment of High Court Judges, those who are ultimately approved and appointed may feel that they are in some way obliged, grateful, indebted or beholden to him for their appointment.

The amendment could read something like this: -

In cases where the Elected President is a current member of any political party, he shall not initiate encourage or abet the commencement of legal proceedings in the High Court against political opponents of his party."

I am prepared to appear before the Committee.

Paper 21

From: National University of Singapore Law Club
c/o Faculty of Law
National University of Singapore
10 Kent Ridge Crescent
Singapore 0511

Dated: 30th October 1990

REPRESENTATION TO THE SELECT COMMITTEE

Attached herewith please find the written Representation of the National University of Singapore Law Club with regard to the Constitution of the Republic of Singapore (Amendment No. 3) Bill 1990.

We would be pleased to nominate persons from among the members of our Club to appear before the Select Committee if asked to do so.

Thank you.

KEVIN NG
President
Law Club 1990-91

INTRODUCTION

The object of the Constitution of the Republic of Singapore (Amendment No. 3) Bill 1990 (hereafter 'the Bill') has been made quite clear by Parliament and the Government in the White Papers on the Elected President as well as in the course of Parliamentary Debates touching on the subject. This representation is concerned with discussing the provisions of the Bill as they now stand, in order to see whether the Bill as a whole does indeed fulfil the intention which lies behind it.

The structure of this representation is as follows:

- (i) The Presidential Elections Committee.
- (ii) The President - Experience and Qualifications.
- (iii) The President - His Discretion.
- (iv) The Council of Presidential Advisors.

- (v) The Religious Harmony Act 1990.
- (vi) The Removal of the President.
- (vii) The Replacing of the President.
- (viii) Electing a New President.
- (ix) Financial Provisions.

I. THE PRESIDENTIAL ELECTIONS COMMITTEE

A Presidential Elections Committee (hereafter 'the PEC') is to be newly constituted. Article 17(2) of the Bill states that the function of the PEC is to ensure that prospective candidates for the post of President will have the necessary 'experience and qualifications'.

Article 18(1) of the Bill reads: 'No person shall be elected as President unless he is qualified for election in accordance with the provisions of this Constitution'.

Article 18(2) of the Bill states that a prospective candidate must be (a) a citizen of Singapore and (b) must not be subject to any disqualifications under Article 45 of the Constitution.

Article 18(2) (c) of the Bill states that he must satisfy the PEC that he does have the necessary 'experience and qualifications'. Article 18(3) of the Bill states further that the requisite 'experience and qualifications' mentioned in Article 18(2) (c) of the Bill are the categories of persons listed in Article 18(3) itself.

A plain reading of these provisions of the Bill would suggest that the role of the PEC - with regards to shortlisting persons who satisfy the criteria in Article 18(3) of the Bill - is simply to research their background and determine whether they do indeed meet that criteria.

If on the other hand, a particular person does not satisfy one of the categories of persons enumerated in Article 18(3), he need not be disqualified from standing as a candidate. This is because provision has been made for the PEC to be satisfied that he does, nevertheless, have the qualities necessary to 'carry out effectively the functions and duties of the office of President'. (Article 18(2) (c) of the Bill).

It is apparent therefore that the PEC does exercise some measure of discretion over the choice of persons who will be eligible to run for the post of President and this is in line with the intention of the government as evidenced by the statements made by the First Deputy Minister and Minister for Defence, Mr Goh Chok Tong in the course of the Parliamentary Debate during the Second Reading of the Bill.

a. DISCRETION IN SELECTION

It will no doubt be said that it is undemocratic to have any one body shortlist candidates since it will undoubtedly be said that all those who are eligible for

election should be allowed to stand and it is the people and only the people who should make a decision. It would surely be difficult for the electorate to decide dispassionately the merits of each candidate since elections are to some extent swayed by popularity. It is necessary therefore that a group of persons decide upon the merits of each candidate. If the PEC can be truly non-partisan both in reality and in appearance, then there is a good chance that this body will be able to function effectively in this regard.

Mr Goh also stated that the categories of persons enumerated in Article 18(3) of the Bill were meant to serve as guidelines only. The current position under the Bill is that those persons whose appointments are not covered in Article 18(3) of the Bill will have to satisfy the PEC that they are Presidential material while those whose appointments are listed in Article 18(3) are automatically listed as candidates.

It is submitted that every person who puts himself forward as a prospective candidate should be subject to the scrutiny of the PEC since service in one or more appointments for a period of three years or more does not necessarily equate to being suited for the Presidency.

It is suggested perhaps that the PEC when determining the merits of each nominated candidate do so not behind closed doors, but in public. An example of this is to be found in the United States whenever the Senate ratifies a particular nominee for a high appointment. This would not only ensure that the merits of each nominee are assessed fairly but would also give each nominee the opportunity to put his own case forward, thereby giving the public some insight into the merits of each prospective candidate and the reasons why he is qualified or disqualified from becoming a candidate.

b. COMPOSITION AND ELECTION

It is submitted that the laws relating to the PEC should not simply be by 'any law enacted by the Legislature'. Since the Elected President is a new institution, the Legislature will by this device be given a great deal of say in deciding how elections to the post of President should be run. To its great credit, the present Parliament has seen fit to enact into law the institution of the Elected President. Assuming that the laws relating to the PEC are made by an ordinary Act of Parliament, there is no guarantee that an unscrupulous government may not amend such laws by a simple majority such that these laws favour the government in power at the time.

A matter of particular importance is the composition of the committee particularly the fact that by the nature of the job which it performs the members of the PEC should be non-partisan. It is therefore important that such laws not be enacted by any law but be entrenched in the Constitution as all other laws relating to the institution of the President are. (This is provided for in Section 3 of the Bill which deals with the proposed amendment to Article 5 of the Constitution).

The method by which the President is elected should also be entrenched. It is suggested that the position in France where by virtue of Article 7 of the French Constitution, the winner of the Presidential election must have won an absolute majority of the votes, be adopted since this would truly mean that the winner has received a mandate from a majority of the people.

II. THE PRESIDENT - EXPERIENCE AND QUALIFICATIONS

The pool of persons enumerated in Article 18(3) include persons as diverse as former Ministers, Judges of the Supreme Court and Chairmen or Chief Executive Officers of certain statutory Boards and Companies.

The Elected President is required to safeguard both national interests and national assets.

A Chairman or Chief Executive Officer of a Company or Statutory Board even with a budget of \$100 million, may not necessarily be Presidential material since his job may simply require competence as an overseer or manager. Conversely, financial experience wise, it is difficult to see why the Chief Justice and Judges of the Supreme Court are included since while there is no doubt as to their integrity, their experience of handling a budget comparable to those of persons in Article 18(3) (b) and (c) is lacking.

The ideal solution would be to have a person who has had experience of both. This is of course not meant to suggest that the persons in Article 18(3) (b) and (c) do not possess both moral standing as well as the requisite financial experience, but the role of the President requires that decisions be made on matters ranging from the use of the nation's reserves to detentions under the Internal Security Act. Hence again the need for the PEC to determine the most suitable candidates.

It might be said that the President, by the very nature of the functions he will perform, should ideally not have any political leanings or political affiliations. Certainly some of the candidates will have strong affiliations with political parties. In this respect, in the event that the person who is elected President is a member of some political party, he should be required to renounce his membership of that party. To actually go so far as to suggest that Presidential candidates should be non-partisan and have no links to any political party would be utopian.

Article 19(1) of the Bill states that the President's term will be six years and the present life span of any one Parliament is only 5 years. If both the President and the Prime Minister are from political parties with radically different persuasions, or at least allied to very different political parties, very real problems may occur.

III. THE PRESIDENT - HIS DISCRETION

It is provided by virtue of Article 17(1) of the Bill that the President shall exercise such powers as are conferred upon him by the Constitution or 'by any other written law'.

This would presumably mean that the powers of the President may be enlarged by Parliament from time to time as the government in power at the time sees fit by the passing of any ordinary act of Parliament. This may lead to the President being given discretion over a great many matters - depending on the government in power at the time.

This would appear to be confirmed by the provisions of Article 20(1) and 20(2)(i) of the Bill, which state that the discretion of the President extends to any matters over which he has been given authority to act by `...this Constitution or by any other written law... .

In Article 22G(2) of the Bill, it is stated that if the President withholds his assent to any Bill pursuant to Article 22G(1) (regarding the curtailment of his powers), then the Bill may be referred to the High Court to determine whether this is actually the intent of the Bill.

It is submitted that this should not be the case since at this stage it is only a Bill and not law and the High Court should not be allowed to look into the merits of a Bill. The High Court is meant to adjudicate and decide upon points of law and should not function as an Advisory Board.

Moreover in Article 22G(3), if the High Court in such a situation deems the Bill not to be curtailing the discretionary powers of the President, then *the President is deemed to have assented to the Bill on the date the High Court made such a determination*. This wording is a little unfortunate since it would seem to suggest that it is in fact the High Court that is the final arbiter on what legislation should be enacted and what should not.

The proposed Article 5(2A) of the Bill allows amendments to be made to particular discretionary powers of the President only in the event that the President does concur.

If the object of the Elected President is for it to become a strong and permanent institution - as it indeed is, it is submitted that the powers of the President should be fixed and not be capable of amendment. One President may be on good terms with the government in power at the time and may sign away much of the discretionary power because he does not need them. The next President may require these powers to serve as an effective check on an errant government. The powers and functions of the Elected President should be specified, enacted and made incapable of amendment.

It is therefore suggested that provision be made in the Bill to limit the discretionary powers of the President to those enumerated in the Bill itself. It is therefore suggested that the words `...and any other written law' be omitted so as to ensure that the President does not receive more powers than were envisaged in the Bill.

Moreover, what is the nature of discretion of the President? The object of the Bill is to ensure that a President will be able to serve as a check on an errant and

irresponsible government. For instance, we know that the role of a President is more custodial than executive. This presumably means that the government still technically exercises all its political power with the President only serving as a check.

For instance, the power of appointment to various posts should still lie with the government of the day. Granted it is the role of the President to ensure that the wrong appointments are not made. If the President has unfettered discretion to veto each recommended appointment by the government without limit, as he has under the present provisions of the Bill, then there is no way for the government to do anything to rectify this situation. (Unless of course that the Prime Minister at the time suggests that he has been guilty of `...misconduct or otherwise...'.) But this will be a laborious process. It is therefore suggested that the President's discretion should be limited.

This is a difficult problem to solve. Perhaps one of three things may be done. Either (i) provision should be made such that so long as the prospective appointee is competent and the recommendation of the government is not made in bad faith, the President must approve: (ii) The appointment should be allowed to take effect if the President is acting in bad faith by not allowing the appointment to take effect or (iii) specific criteria or at least broad guidelines should be laid down in statute which the President should follow and the decision will not be valid if it can be determined that the President has not exercised his discretion based upon the broad guidelines which he has been given. The President will still have a great deal of latitude with the exercising of his discretion, but broad guidelines will at least make it easier to determine whether or not he has acted in a manner not befitting the holder of such high office.

It should be stated at this point that the above points are merely suggestions. Bad faith for instance will be difficult to prove in most cases, but it is nevertheless submitted that some sort of criteria be set down in statute as guidelines.

IV. THE COUNCIL OF PRESIDENTIAL ADVISORS

Article 20(3) of the Bill states that the President shall consult the CPA before performing any functions under Articles 22A(3), 22C(3), 144 and 148A of the Bill. (All of which are essentially financial matters). However, in all matters under Article 20(2) (c) to (i), the President may consult the CPA. It would appear therefore that the primary role of the CPA is to advise on financial matters although the President may in refer particular matters to the CPA.

Moreover, the composition of the CPA which is spelt out in Articles 37D and 37E of the Bill would not appear to clearly spell out the correct criteria for persons who would advise the President on financial matters. In fact, the standard required for membership of the CPA is almost the same as that for the Presidential Council for Minority Rights (Articles 71 and 72 of the Constitution). It is suggested that more stringent criteria be set for membership to the CPA particularly with regard to financial expertise.

In Article 37B (2), it is stated that members of the CPA will be appointed for a term of three years which may be extended. It is suggested that by the very nature of the CPA, a term of three years is insufficient. There should be some more permanent arrangement. It is suggested that these members be appointed for life.

Article 37J of the Bill states that the proceedings of the CPA will be conducted in private and no objectors and witness will be heard. It is submitted that this should not be the case. While it is agreed that by the very nature of the CPA and the role it performs, matters may be discussed which may be of a highly sensitive nature, there is no reason why the opinion of experts and witnesses should not be sought if such testimony does indeed clarify the matter at hand. The CPA should have the power to regulate its own proceedings and decide what matters should be discussed in public and what matters should not. The advantages is that deliberations subject to public scrutiny would ensure that the CPA is truly impartial.

No provision has been made as to how a situation should be resolved when there is a tied vote between the members of the CPA. In this case, it is suggested that there either be an odd number of members comprising the CPA or provision be made such that the Chairman of the CPA has the casting vote.

Finally, it is suggested that in the case of Preventive Detention under the Internal Security Act and Detentions under the Religious Harmony Act 1990, the advice on which the President should act is that of the Advisory Board of Preventive Detention which is constituted under Article 151(2) of the Constitution or the proposed Advisory Body which will make recommendations under the Religious Harmony Act 1990. It is submitted that in any matters involving these two acts, the advice of these two advisory bodies should be taken and not that of the CPA.

V. THE RELIGIOUS HARMONY ACT 1990

The Bill provides that in situations where the Presidential Council for Religious Harmony makes any recommendation to the Minister to revoke or modify an order which has been made, it is the President that will make the final decision. The recommendation of the Council will not be disregarded unless the President concurs with the Minister.

It is submitted that due to the fact that the Presidential Council for Religious Harmony is made up of persons that have been specially chosen to sit in the Council because each is deemed to have the requisite expertise to deal with matters relating to religion, it is the decision of the Council that should be paramount and that the President is not equipped to decide on such an issue and there is therefore no reason why the recommendation of the Council should be disregarded simply because the President agrees with the Prime Minister.

VI. THE REMOVAL OF THE PRESIDENT

The President may be removed from office by a resolution passed by three quarters of the members of Parliament. However this is only possible if the Prime

Minister initiates such a motion (Article 22K(4) (a)). It is submitted that there is no reason why this should be the case. Each member of Parliament should have the right to request that such a motion be carried. In order to ensure that vexatious applications are not made, such motions should only be made possible subject to the acquiescence of a certain number of members of Parliament. Article 61(1) of the Constitution of the Republic of India for instance requires that a quarter of either of their Houses of Parliament carry a similar motion.

Article 22K(3) (b) states that the President may be removed by resolution if he is found, guilty by the tribunal of judges of allegations of 'misconduct or otherwise'. No guidance is given as to what this means. Since the only punishment for an errant President is removal from office, it is a matter of no little importance that this be determined by a competent body.

The procedure for removal is included in the Bill. It is however necessary that before Parliament can remove the President, a tribunal of judges must decide whether the allegations averred against the President are in fact true. Only if the judges deem them to be true can Parliament resolve to remove the President. It is therefore the judges that will decide the ambit of '...misconduct or otherwise...' and this will ensure that the President is not dismissed for the most minor infraction. The guidelines used will probably be the same as those in the 1988 White Paper, provisions which are similar to those in Article 38(2) (a) of the Constitution of Sri Lanka.

It is however apparent that it is Parliament or rather the Prime Minister that will frame the charges against the President. So essentially the role of the tribunal of judges will essentially be to determine whether the facts, or rather allegations, so averred are in fact true and determining from this whether the President merits dismissal. There is no limit to the number of times allegations may be made against the President by a Prime Minister with a large majority in Parliament. It might be difficult for the President to carry out his job well with accusations being thrown at him all the time. It is therefore fortunate that it is a tribunal of judges who will decide whether the actions of the President on a case-by-case basis does indeed merit dismissal.

Finally, it is suggested that while Parliament may initiate action against the President, it should be the people who decide whether the President should be removed. This is because in spite of the findings of the tribunal of judges, the people may disagree with their opinion.

Moreover, the current composition of Parliament will certainly make it possible to remove a President. However, the present provisions of the Bill do not envisage the situation where there may be a hung Parliament or one in which no government has a majority of three-quarters of the members of Parliament. In such a case, assuming that voting will be on party lines, it will not be possible to remove the President in any circumstances.

VII. REPLACING A PRESIDENT

Article 22M of the Bill provides that in the event that the President is unable to exercise the functions of his office, it would be the Chief Justice and then the Speaker of Parliament who will assume his functions. It is submitted that this is an unacceptable position because it is the President who has received the mandate of the citizens of Singapore to exercise his wide-ranging powers, while the Chief Justice and the Speaker have not.

Moreover by the very nature of the role of the Chief Justice as head of the judiciary of Singapore, it is difficult to see why it should be that he will take over the functions of the President if the latter is unable for some reason to carry out his duties.

By virtue of Article 20 (2) (g) of the Bill, the President can exercise his discretion with regard to the withholding of concurrence in relation to detentions under the Internal Security Act. In 1988, Parliament amended the ISA to exclude judicial review of executive discretion. As already stated, by virtue of Article 22M(1), in the event that the President is unable to exercise his functions, it will be the Chief Justice and then the Speaker of Parliament who would take over in that order.

It is submitted that it would be incorrect to have the Chief Justice, the head of the judiciary make a decision on a matter pertaining to legislation such as the ISA which is concerned with executive discretion. This argument is based not upon the integrity of the Chief Justice which is never in doubt, but rather upon the nature of the decision which he may be required to take, which should be excluded from his purview.

The Speaker of Parliament will in all probability be a member of some political party (independants are few and far between in Singapore) and should for this reason not be part of any decision making process since there is a possibility that he may be influenced by party policy. Also he might be drawn from the ranks of the party backbenchers and so may not have the requisite experience for the job.

It is suggested that for the reasons given in the previous few paragraphs, that provision be made for the inclusion of a Vice-President. It is suggested that both the President and Vice-President run as a team with the Vice-President taking over the functions of the President if the President is temporarily unable to fulfil his duties. The primary criticism of having such a situation is the fact that it would appear that the Vice-President will have no functions to perform.

It is submitted that this point while being valid is out-weighed by the fact that to allow a situation where the Chief Justice takes over may lead to problems in certain circumstances. It is admittedly difficult to find a role for the Vice-President.

One suggestion may be to make him the seventh member of the CPA. It is also suggested that if provision is made for the Vice-President to take over the functions of the President, he should complete the President's 6 year term in office.

Again, the question must be asked as to what happens if both the President and Vice-President are incapacitated and unable to complete the term in office. While it is recognised that a line of succession is important and provided for in many other countries, it is submitted that for the reasons given earlier, neither the Chief Justice nor the Speaker should take over the job. As stated earlier, either (i) the Vice-President should complete the President's term in office or (ii) the Vice-President should be acting President while elections are conducted for a new President.

VIII. ELECTING A NEW PRESIDENT

The Bill requires that elections be held 6 months after the post of President is vacant. However it is submitted that this is still far too long. Article 7 of the French Constitution states that elections should be held 20 to 35 days after the incumbent has left office. It is suggested that the sooner a new President is sworn into office, the better. The only problem may be the time span for nomination and approval of candidates by the PEC. It is however suggested that taking into account the fact that our electorate is so small, this can be done.

IX. FINANCIAL PROVISIONS

If the President refuses to assent to a Supply Bill, Parliament may override his decision by a majority of two-thirds. (Article 148D(1)). It is suggested that by the nature of the Bill, this should not be so since one of the fundamental objectives of having an Elected President is so that it is he and not Parliament that has the final say on all matters pertaining to finance.

Hence the importance of the President and the CPA having had experience of handling financial matters at a high level.

Finally it is suggested that provision be made such that the President will have the right to block any moves by the Prime Minister regarding the privatisation of government listed companies and statutory boards. This is in order to prevent wasteful governments from financing their massive overspending.

CONCLUSION

While the concept behind the Bill appears to be a good one, its very novelty may lead to misunderstandings and conflicts if the parameters of each branch of government in relation to themselves and to the Elected President are not clearly mapped out.

It is hoped that this representation will be of assistance to the Select Committee in their deliberations.

Paper 24

From: National University of Singapore
Socialist Club
National University of Singapore
Kent Ridge P.O. Box 1033
Singapore 9111

Dated: 26th October 1990

ELECTED PRESIDENTIAL BILL

1. The NUS Democratic Socialist Club (DSC) respectfully submits this representation on the Elected President Bill or Constitution of the Republic of Singapore (Amendment No. 3) Bill (hereinafter "the Bill") to the Select Committee chaired by your good self.
2. Our club (DSC) held an Informal Discussion on the Bill on 24th Oct 1990.
3. Attached is a copy of the report on the Informal Discussion for your committee's perusal. We hope that this representation would be of assistance to your committee in its deliberations.
4. Should you require oral evidence to be presented, the following members of the club would be most honoured to appear before your committee:
 - 4.1) Mr Hoon Dah Hao, President.
 - 4.2) Miss Tang Meen Er, Public Relations Secretary and Chairperson of the Informal Discussion.
 - 4.3) Mr Edwin Pang, Asst. General Secretary and Secretary for the Informal Discussion.
 - 4.4) Mr Gary Chan, Publications Secretary.
 - 4.5) Mr Goh Keng Hock, Asst. Public Relations Secretary.
 - 4.6) Mr Koh Su Haw, Ordinary Member of the club.
 - 5.7) Mr Charan Singh, Ordinary Member of the club.
5. Thank you and best regards.

HOON DAH HAO
President

REPORT ON THE DSC INFORMAL DISCUSSION ON
THE ELECTED PRESIDENT BILL OR CONSTITUTION
OF THE REPUBLIC OF SINGAPORE
(AMENDMENT NO. 3) BILL

INTRODUCTION

On 24 Oct 1990, the following DSC members took part in an Informal Discussion on the Elected President Bill:

1. Mr Hoon Dah, President.
2. Ms Tang Meen Er, Public Relations Secretary and Chairperson of the Informal Discussion.
3. Mr Edwin Pang, Asst. General Secretary and Secretary for the Informal Discussion.
4. Mr Gary Chan, Publications Secretary.
5. Mr Koh Keng Hock, Asst. Public Relations Secretary.
6. Mr Koh Su Haw, Ordinary Member of the club.
7. Mr Charan Singh, Ordinary Member of the Club.

In the course of the Discussion, the club (DSC) came up with the following proposals to the Select Committee:

1. THAT INSTEAD OF THE CHIEF JUSTICE OR SPEAKER OF PARLIAMENT, THE CHAIRMAN OF THE COUNCIL OF PRESIDENTIAL ADVISORS (CPA) SHALL EXERCISE THE FUNCTIONS OF THE OFFICE OF THE ELECTED PRESIDENT, IF THE OFFICE BECOMES VACANT PRIOR TO THE EXPIRATION OF THE INCUMBENT'S TERM OF OFFICE.

1.1 With reference to Article 22M(1) (under Clause 4) of the Bill which states that "If the office of President becomes vacant prior to the expiration of the term of office of the incumbent, the Chief Justice or, if he is unavailable, the Speaker shall exercise the functions of the office of President...", it is our opinion that the Chairman of the CPA, rather than the Chief Justice, ought to assume the office of the Elected President.

1.2 It is submitted that this is necessary to enhance impartiality in the execution of the functions of the Elected President, because if the Chief Justice becomes the Elected President, he may be faced with a conflict of interests between the Judiciary and the Executive, both of which he would then be a part of. This conflict of interests is possible because, as stated in Article 11(93A) (1) and (2) (under Clause 11) of the Bill, all proceedings relating to the election of the President are determined by the Chief Justice or a Judge of the Supreme Court nominated by the Chief Justice. Besides, this Election Judge has the power to hear, determine and make orders on the proceedings relating to the election of the

President, and the decision of the Election Judge is final. In addition, as stated in Article 22L(1) (a) and (b) (under Clause 4) of the Bill, the Election Judge has the authority to determine that the President was not duly elected or that the election of the President was void.

1.3 Secondly, if the Chief Justice or the Speaker takes over the office of the Elected President, they may find themselves overburdened with the heavy responsibilities of their dual roles, and hence, may not be able to carry out their duties in either of the offices as well as they would like to, or as well as they should.

1.4 The Chairman of the CPA is a suitable candidate for the office of the Elected President because he would be familiar with the functions of the office of the Elected President, and would have the ability to carry them out.

2. THAT THE PRESIDENTIAL ELECTIONS COMMITTEE (PEC) BE CHAIRED BY THE ELECTION JUDGE AND THAT THE PEC, AND NOT JUST THE ELECTION JUDGE, BE RESPONSIBLE FOR ALL PROCEEDINGS PERTAINING TO THE ELECTION OF THE PRESIDENT.

2.1 With reference to Article 22L(1) (a) and (b) (under Clause 4) and Article 11(93A) (1) and (2) (under Clause 11) of the Bill, which are highlighted in Paragraph 1 of this Representation, we would like to propose that for the purpose of providing a wider range of opinions so that the making of right decisions can be enhanced, responsibilities pertaining to the proceedings of the presidential election be handled NOT by only one person (the Election Judge), but by a body, namely the PEC.

2.2 However, to enhance impartiality in the PEC's handling of responsibilities pertaining to the presidential election proceedings, we also proposed that the Election Judge chairs the PEC because he would either be the Chief Justice or a Supreme Court Judge who would have the legal experience needed to guide the PEC.

2.3 With reference to Paragraphs 2.1 and 2.2 of this Representation, we therefore propose that all references to "Election Judge" in Article 22L (under Clause 4) and 93A(2) (under Clause 11) of the Bill, be changed to "PEC". Article 93A(1) (under Clause 11) of the Bill should also be amended to read as "All proceedings relating to the election of the President shall be heard and determined by the PEC which shall be chaired by the Chief Justice or by a Judge of the Supreme Court nominated by the Chief Justice for the purpose".

2.4 In view of the additional function of the PEC, Article 93A(3) (under Clause 11) should be amended to read as "The procedure and practice in proceedings relating to the election of the President shall be regulated by the rules which may be made under any written law relating to the establishment of the PEC under Article 17(2)".

3. THAT THE TERM OF OFFICE OF THE CHAIRMAN OF THE COUNCIL OF PRESIDENTIAL ADVISORS (CPA) BE INCREASED TO 6 YEARS.

3.1 With reference to Paragraph 2 of this Representation on having the Chairman of the CPA assume the office of the President should the incumbent be unable to complete his term of office, we propose that the term of office of the Chairman be increased to 6 years to coincide with the term of office of the Elected President.

3.2 This would ensure the availability of the Chairman for assuming the office of the President should the incumbent be unable to complete his 6 year term of office.

4. THAT THE NUMBER OF MEMBERS IN THE COUNCIL OF PRESIDENTIAL ADVISORS (CPA) BE INCREASED TO 9.

4.1 We propose that the number of CPA members be increased to 9; with 3 members appointed by the President on his own discretion, 3 appointed by the President on the advice of the Prime Minister and the last 3 on the advice of the Public Service Commission (PSC) Chairman.

4.2 Such a move would widen the pool of expertise in the CPA to ensure greater efficacy in the CPA's advisory role. This factor is important because, with reference to Paragraph 1 of this Representation, the Chairman of the CPA may assume the office of the President should the incumbent be unable to complete his term of office.

5. THAT SECURITY OF TENURE BE CONFERRED UPON THE COUNCIL OF PRESIDENTIAL ADVISORS (CPA) MEMBERS APPOINTED BY THE PRESIDENT ON THE ADVICE OF THE PUBLIC SERVICE COMMISSION (PSC) CHAIRMAN.

5.1 With reference to Paragraph 1 of this Representation which states that the Chairman of the CPA should replace the incumbent President if the latter is unable to complete his term of office, it is our opinion that the increased importance of the CPA may on the advice of PSC Chairman, to have security of tenure so as to enhance continuity in the CPA. This is because the permanent CPA members would be able to gauge and perceive the development of the CPA's role as a check on the Elected President.

5.2 We also propose that the CPA members appointed by the President on the advice of the PSC Chairman, be the ones to be given security of tenure because PSC is apolitical in nature. Therefore, the chances of these members voting freely are raised.

6. THAT A TWO-THIRD MAJORITY IN A NATIONAL REFERENDUM BE REQUIRED FOR NEW PROVISIONS PERTAINING TO THE ENHANCEMENT OF THE PRESIDENT'S POWERS.

6.1 Article 5(2A)(under Clause 3) of the Bill entrenches the present powers of the Elected President. However, there are no provisions in the Bill to prevent increased powers from being given to the President. Such an enhancement of presidential powers may be against people's will and interests.

6.2 Hence, we propose that it be stated in the Bill, that the holding of a national referendum and a two-third majority in the referendum be required, before any provisions pertaining to the enhancement of the President's powers are added to the Bill.

6.3 In line with Paragraph 6.2, we propose that Article 20(2) (i) (under Clause 4) of the Bill be amended by inserting after the word "discretion", the following sentence:

"Any new functions to be performed by the President must be approved by a two-thirds majority in a national referendum."

7. THAT THE ELECTED PRESIDENT SEVERS TIES WITH HIS POLITICAL PARTY (IF ANY) WHEN HE ASSUMES OFFICE.

7.1 To ensure impartiality in the highest office in the land, we propose that upon assuming office, the Elected President severs ties with any political party that he may belong to.

7.2 This is essential in ensuring that the President serves as an effective check against the Government.

8. THAT THE LIST OF PERSONS WHO QUALIFY TO RUN IN ELECTIONS FOR THE OFFICE OF THE PRESIDENT INCLUDE AMBASSADORS AND HEADS OF PROFESSIONAL BODIES.

8.1 To increase the talent pool from which to choose the Elected President, we propose that the list of persons who qualify to run in elections for the office of the President under Article 18(3) (under Clause 4) of the Bill, be increased to include ambassadors and heads of professional bodies who are individuals with experience, expertise and leadership qualities.

9. TECHNICAL AMENDMENTS

9.1 It is our opinion that the words "appointed" and "appoint" in lines 7 and 8 respectively in Article 37C (under Clause 6) of the Bill, are ambiguous. We propose that they be substituted by the words "nominated" and "nominate" respectively.

9.2 The following sentence should also be included after the word "period" in the last line of Article 37C (under Clause 6) of the Bill:

"That member will then be duly appointed by the President in accordance with Article 37B (under Clause 6) of the Bill."

CONCLUSION

With the exception of the above proposals, we are generally in support of the Elected President Bill and its being a check on the Government in ensuring that the latter does not abuse its power for its own purposes.

Report prepared by Mr Edwin Pang,
Asst General Secretary and Secretary for the Informal Discussion,
in consultation with DSC members involved in the Discussion.

Paper 26

From: Mr Walter Woon
Faculty of Law
National University of Singapore
10 Kent Ridge Crescent
Singapore 0511

Dated: 29th October 1990

CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL 1990

REPRESENTATION TO THE SELECT COMMITTEE

1. I generally support the aim of the Bill, viz, to provide some check upon the presently unrestricted powers of the Executive branch of government.
2. My main reservations lie in two areas: firstly, will the check be an effective one? Secondly, are there any safeguards against abuse of power on the part of the Elected President? These two areas are conceptually distinct and I shall deal with each separately rather than follow the scheme of the Bill.

EFFECTIVE OF THE CHECK PROVIDED BY THE ELECTED PRESIDENT

3. I start with the basic premise that in order to be an effective check on the Executive, the President must be independent of the Executive. Any potential source of bias on the part of the President or leverage on the part of the Executive should be minimised, if not eliminated altogether.
4. Article 18(4) requires the President to vacate his seat if he is a Member of Parliament and to refrain from commercial activity. I presume that this is to ensure that the President is not involved in a conflict of interests. However, there appears to be no requirement for the President to refrain from party-political activity and to cut his ties with existing political parties.
5. If a President is a member of any political party, there is a risk that he will be biased in favour of that party and against other parties. Even if the President is a man of outstanding altruism and unimpeachable integrity, the suspicion of such bias will exist. This will lead the cynical to view the President's actions in a cynical light, and in the long run will diminish the stature of the Presidency. I do not think that this is a healthy thing.
6. The President will be more than a mere politician; he represents Singapore to the outside world and he is to a large extent the focus of a Singaporean's loyalty in his capacity as Head of State. If the Presidency is perceived as a party-political post,

I fear that the respect that the President presently commands will diminish. Even the PAP cannot claim the support of more than 6 out of 10 voters. In future, the figures may be far less favourable than this. If the President is perceived to be the tool of a political party, he automatically forfeits the support of the persons who are against that political party. His value as a symbol and a unifying force will be destroyed.

7. Ideally, the President should be politically neutral. Practically speaking, this will probably be impossible to achieve. However, it is possible to make at least one compromise: require a candidate for the Presidency to formally renounce his ties with any political party by resigning from membership before standing for election. Although this will not guarantee political neutrality, it will at least be a symbolic gesture on the part of the President that he will not be swayed by loyalty to any one party but will exercise his powers for the good of Singapore as a whole.

Suggestion: add a new clause (3A) to Article 18 in the following terms:

"(3A) A person seeking to be elected as President shall resign from any political party of which he is a member before his nomination for the Presidency."

8. The requirement to resign before nomination is suggested in order to demonstrate the sincerity of the candidate. By resigning from his political party, he automatically vacates his seat in Parliament: Art 46(2)(b). He will then have crossed the Rubicon and burnt his bridges behind him, since he will not even be a Member of Parliament should he fail to be elected. If a potential candidate for the Presidency is unwilling to cut his ties with his political party in this way, I think that there would be grounds to suspect his objectivity.

9. I note that a Minister is deemed to be automatically qualified to stand for the Presidency: Art 18(2)(a). I suggest that this is not desirable. The President is supposed to function as a check on the Executive; if he himself was an immediate past member of the very same Executive that he is supposed to check, how effective will he be?

10. The only time that the President will be called upon to exercise his blocking power is if a government tries to spend the reserves for illegitimate purposes, presumably to buy popularity. A government with an unassailable majority does not have to buy popularity; it is only when the government has a paper-thin majority that the danger, of this sort of thing is most acute. If the President was a past member of the Cabinet and the effect of his veto would be to ensure the fall of the government, will he exercise that veto? Will the ties of personal and party loyalty prove too much? If he fails to exercise his veto in such a situation, then the whole rationale for the elected Presidency fails. I suggest that we should not put the President to such a test.

Suggestion: add the following as para (c) of Art 18(2), renumbering the existing paras accordingly:

"(c) he has been a Cabinet Minister at any time within the five years preceding his nomination for the Presidency."

11. Again, this will not wholly eliminate the problem of bias or personal ties. However, I suggest the five-year "cooling-off" period in order to provide some protection against a member of government moving directly from Cabinet to the Presidency. I think that it is undesirable to allow such a move, since there is a strong likelihood of personal bias where this occurs. The period of five years is suggested because that is the normal span of a government's life.

12. Articles 22M and 22N provide that the Chief Justice or the Speaker of Parliament shall exercise the functions of the President if he is unable to do so or if the office is vacant. The 1988 White Paper envisaged the election of a Vice-President. There is no reason why a Vice-President should not also be elected. The Vice-President should be subject to the same qualifications and disqualifications as the President. He can be made the ex-officio Chairman of the Council of Presidential Advisors.

Suggestion: provide for the election of a Vice-President, to hold office concurrently with the President and subject to the same qualifications and disqualifications. The Vice-President can be made ex-officio Chairman of the Council of Presidential Advisors.

13. The existence of an independently-elected Vice-President will help to minimise the danger of bias or conflict of interest on the part of the President.

ABUSE OF POWER BY THE ELECTED PRESIDENT

14. This is the converse of the previous set of problems. What if the President decides to use his powers illegitimately? How can he be stopped? Under the present bill, there is an override provision if the President vetoes spending. There is no similar override provision if the President vetoes an appointment to a key position or if he declines to act on advice when constitutionally required to do so.

15. The power to veto appointments to key positions gives the President an enormous potential power of politician patronage. He can theoretically ensure the appointment of only his candidates if he exercises the power of veto to block any alternative appointments. I suggest that the President should have to obtain the concurrence of the Council of Presidential Advisors before exercising his power to block appointments.

Suggestion: amend Art 20(3) to include references to the exercise of the President's power under Arts 21 and 22 as well.

16. In the event that the President exercises his powers to block appointments without the concurrence of the Council of Presidential Advisors, his veto should be subject to being overridden by a resolution of Parliament, as in Art 148D.

Suggestion: insert an Article similar to Art 148D allowing Parliament to override a Presidential veto by a two-thirds majority.

17. At present the President is immune from suit except where specifically provided otherwise. If a President were to refuse to act on advice when he is constitutionally bound to do so, the only way to prevent this abuse would be to remove him. This is an extreme step. There should be provision for a court to make a binding determination as to whether any particular exercise of power by the President is discretionary or not.

Suggestion: specifically empower the High Court to declare whether the exercise of a power by the President is discretionary or not. In the event that the President does not act on advice when constitutionally bound to do so, the court should have the power to declare that the act in question has been done in accordance with the advice of the responsible minister notwithstanding the President's refusal to act.

18. Article 22K(4) on the removal of the President is unfortunately vague. It requires Parliament to pass a motion proposing the removal of the President. If the tribunal referred to finds "that the President has been guilty of any of the allegations contained in the motion" Parliament may pass a resolution removing the President. What allegations need to be proven is left vague. It is suggested that Article 22K(4)(b) be redrafted as follows:

"(b) a tribunal appointed by the Chief Justice has held an inquiry into the allegations made against the President and reported to the Speaker that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been *guilty of misconduct rendering him unfit to be President.*"

I suggest that this would be far better than allowing the President to be removed on the basis of unspecified allegations.

19. These suggestions will not prevent all abuses of power. Where no party commands a two-third majority, the President will be a power in his own right and not subject to being overridden. However, to weaken the President's powers any further may defeat the primary aim of the bill, which is to provide an effective check on the Executive.

Paper 27

From: Institute of Certified Public
Accountants of Singapore
116 Middle Road
#09-01/04 ICB Enterprise House
Singapore 0718

Dated: 30th October 1990

CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL - ELECTED PRESIDENT

In accordance with the letter of 9 October 1990 from the Ministry of Law, I have sought the views of our Council on the above Bill with specific reference to the provisions touching on financial and budgetary procedures.

Pursuant to Standing Order 69, we have not deliberated on the general merits and principles of the Bill but have confined our discussions on its details. We have concentrated mainly on the technical accountancy issues, with particular focus on their effectiveness and practicability in safe-guarding the financial assets of our Republic. An executive summary of these matters is enclosed, with further explanations being attached in Appendix 1.

We have endeavoured to be as detailed and comprehensive as possible in our submission so that it would not be necessary for us to appear before the Select Committee. Nevertheless, we should be glad to provide in writing any further information and explanations you may require.

KEITH A.K. TAY
President

CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

EXECUTIVE SUMMARY OF RECOMMENDATIONS OF ICPAS

1. PRESIDENTIAL ELECTIONS COMMITTEE

In order that the members of the Presidential Elections Committee could be seen to be independent, we recommend that this committee comprise primarily of

members of the Judiciary or other appropriate independent body: this could be specified clearly in the Bill or in appropriate supplementary legislations to avoid unnecessary concern.

2. DEEMED ELIGIBLE CANDIDATES FOR ELECTED PRESIDENT

It is recommended that, if possible, the list of "deemed" suitable persons for candidacy of Elected President be more generally worded. A civil service designation (eg. Permanent Secretary rank) could be stipulated as a yardstick against which private sector candidates could be compared by reference to the level of their annual assessable income.

The pool of deemed eligible candidates could also be widened to include certain professionals. Additionally, we recommend that qualifying chairman and chief executive officers should be from companies with net tangible assets of more than \$100 million rather than companies with paid-up capital of \$100 million.

3a. BUDGETS OF THE GOVERNMENT, GOVERNMENT COMPANIES, AND STATUTORY BOARDS

In order to achieve the financial objectives with the minimal costs we recommend the following self-regulatory controls:

- i) The responsible officials [i.e. chairman and chief executive officer, or the appropriate Government official] should attest as to whether the budgets for which they are responsible for monitoring are likely to draw down the frozen reserves.
- ii) The Elected President should have the reserve power to direct the Auditor-General or any approved external auditors to review the budgets and to check the validity of the aforementioned attestation. If the Elected President vetoes any budgets, the respective entities should resubmit a revised budget within 3 months from the first day of the financial year.
- iii) If the Elected President still vetoes the revised budget, the Government should be permitted to spend the previous year's expenditure only if the current year's rates of revenue collection remain unchanged from the previous year.

3b. MONITORING OF BUDGETS OF THE GOVERNMENT, GOVERNMENT COMPANIES, AND STATUTORY BOARDS

In order to implement controls to ensure that actual expenditure conforms with the budget, the following is recommended:

- i) The chairman and chief executive officer of statutory boards and Government companies and their auditors should certify that the actual results conform with the budget to the extent that the frozen reserves have not been drawn down.
- ii) The Accountant-General and Auditor-General should certify that actual results conform with the Supply Bill and annual estimates, to the extent that the frozen reserves are not drawn down.

- iii) The chairman and chief executive officers, or the Accountant-General in the case of the Supply Bill and annual estimates, should issue a supplementary report once they envisage that there could be a significant deviation from the budget which may result in a draw-down of the frozen reserves.

3c. INVESTMENT DECISIONS

The Elected President's approval should be required for investments which are made out of the 'frozen' reserves. All statutory boards and government companies should institute appropriate investment appraisal procedures to minimize the risk of inadvertent depletion of frozen reserves through unwise investments.

4. BUDGETS OF GOVERNMENT COMPANIES

The chairman and chief executive officer of each subsidiary could be required to certify in writing to the holding company that its budget is not not likely to draw down the frozen reserves. On the basis of such budgets and certification, the chairman and chief executive officer of the holding company will provide similar certification on the consolidation budgets to be submitted to the Elected President.

5. ACCOUNTING SYSTEM OF THE GOVERNMENT

The accounting system of the Government currently operates on a cash basis, in which development expenditure and other assets are written off when incurred. This system should be converted to a commercial basis of accounting to ensure that all assets and liabilities are identified for the purpose of determining the reserves and ensuring that proper accounting controls are in place to protect such assets more effectively.

The Bill should specify the rights of the Government relating to the managing of items such as non-financial assets. For example, the Bill should specify as to whether the Government can sell or mortgage non-financial assets (eg. rights for broadcasting, telecommunication) or unrecorded surpluses of assets stated at historical costs or nil value, which are not included in the statement of assets and liabilities of Singapore.

In addition, the Bill should specify as to whether the frozen reserves includes, as it should, such undisclosed surplus resulting from a revaluation of assets originally stated at historical cost, or nil value because of the cash basis of accounting. For example, revaluation surplus arising from the revaluation of Government buildings should be included in the frozen reserves.

APPENDIX I

CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL RECOMMENDATIONS BY ICPAS FOCUSING MAINLY ON THE EFFEC- TIVENESS AND PRACTICABILITY OF THE FINANCIAL AND BUDGETARY PROCEDURES

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

- (1) *Presidential Elections
Committee*
— Article 17(2)

Article 17(2) refers to the establish-
ment of a Presidential Elections
Committee. However, there is no
mention as to the composition of
this committee.

It is recommended that the
members of the Presidential Elec-
tions Committee should be seen to
be independent so that there could
be minimal future criticisms that
"sieving procedures" have operated
unfairly towards any potential can-
didates.

A good example of a body that
functions independently of the
Government is the Judiciary. It is
therefore recommended that the
Presidential Elections Committee
comprise primarily of members of
the Judiciary or other appropriate
independent body. This should be
specified clearly in the Bill or in
appropriate supplementary legisla-
tions to avoid unnecessary concern
or future criticism from dissatisfied
contenders

- (2) *Deemed eligible candidates
for Elected President*
— Article 18(3)

Article 18(3) identifies the desirable
experiences and qualifications of an
Elected President. However, the list
excludes some who may have per-
formed well in other careers.
Examples of such persons include
the Vice Chancellor, Commissioner
of Police etc.

It is acknowledged that not all
people holding responsible positions
necessarily possess the qualities and
responsibilities required of an
Elected President. However, whilst
many do not really aspire to be an
Elected President, some may feel
aggrieved by the fact that they are
not eligible.

On the contrary, not everyone fal-
ling within the "deemed list" auto-
matically possesses the necessary
qualities and attributes required of

It is recommended that if possible
the list of deemed suitable persons
in Article 18(3) be more generally
worded. The list should in any case
be illustrative but not prescriptive so
that every nominated candidate will
have to be cleared by the Presiden-
tial Elections Committee.

A civil service designation (eg. Per-
manent Secretary rank) may be sti-
pulated as a yardstick for candidates
deemed to have the experience and
qualifications of an Elected Pres-
ident. The qualifications of private
sector candidates can then be com-
pared to the stipulated yardstick, by
reference to their level of annual
assessable income which would be a
fair indication of their experiences
and qualifications. Other equally
important attributes like integrity,
commitment and strength of charac-

APPENDIX I - (continued)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

- (2) *Deemed eligible candidates
for Elected President*
— Article 18(3)

an Elected President. Furthermore, by way of illustration, the chairman or chief executive officer of a property company that owns a single \$100 million office building and has a paid-up capital of \$100 million, may have limited experience but he will qualify as a candidate.

ter etc. could be assessed by the Presidential Elections Committee.

In addition, there may be a case to widen the pool deemed eligible candidates by including persons such as: —

"Chairman and senior partners of professional services firms (law, accountancy, architecture, medical) which are not companies incorporated or registered under the Companies Act, but whose annual billings exceed say \$100 million." It is feasible in such cases, to specify tangible assets or paid-up capital as a criteria.

Under the existing provisions, chairman or chief executive officers of companies with paid-up capital of at least \$100 million will qualify under the deeming rule. This rules out corporate bodies which may operate with a relatively low capitalisation but has either very high turnover or high accumulated earnings/reserves, or a company with a relatively high gearing in debentures or bonds. Under these circumstances, it may be more appropriate to define qualifying companies as those with net tangible assets of more than \$100 million whether these assets are funded directly by equity capital or other means.

- (3a) *Budgets of the Government,
Government companies
and statutory boards*
— Article 22A and 22C, and
Article 147 and 148A.

The Bill provides that if the Elected President vetoes budgets with the Government's acceptance, the respective entities i.e. statutory boards, Government companies and the Government may incur expenditure not exceeding the amount provided in the preceding year's budget.

If an unexpected recession severely restricts our revenue-generating capabilities, incurring the previous year's expenditure in the current year may still result in a deficit. Consequently, our reserves may be drawn down.

- (a) In order to achieve the financial objectives with the minimal costs, we recommend the following self-regulating controls be implemented for budgets that are not likely to draw down on the frozen reserves i.e. reserves accumulated prior to the current term of office of the Government:

- (i) In the case of statutory boards and Government companies, the chairman and the chief executive officers should attest in writing that they sincerely believe their respective

APPENDIX I - (continued)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

(3a) *Budgets of the Government, Government companies and statutory boards*

– Article 22A and 22C, and Article 147 and 148A.

Likewise, an Irresponsible Government may cease collecting taxes and other revenue to gain popularity during an election year, and fall back on spending the preceding year's expenditure. This will also result in our reserves being drawn down.

The last paragraphs of Articles 22A(4) and 22C(4) provide that the expenditure referred to above should subsequently be approved by the Elected President. However, this only applies to statutory boards and Government companies. There is no such provision in the case of the Supply Bill and annual estimates submitted by the Government.

budgets are not likely to draw down the frozen reserves. In practice the detailed verification work could be performed by management and counter-checked by the Audit Committees and the Board of Directors.

(ii) In the case of the Supply Bill and annual estimates of the Government, the appropriate Government official should similarly attest in writing that the Supply Bill and annual estimates are not likely to draw down the frozen reserves.

(iii) If the Elected President is in any way dissatisfied with the submitted budgets (even though they contained the above attestation that there would be no draw-down of the frozen reserves), he should have the reserve power to direct the Auditor-General or any approved external auditors to review them and report the findings to him.

(b) In the event that the Elected President vetoes the initial budgets of statutory boards and Government companies, or the Supply Bill and annual estimates of the Government, the entities should resubmit another revised budget, or Supply Bill and annual estimates within 3 months from the first day of the financial year. These resubmitted documents could then be approved by the Elected President during that financial year.

(c) It is also recommended that, unless the Elected President's approval is obtained, the Government should be permitted to spend the previous year's expenditure only if the current year's rates of revenue collection remain unchanged from the previous year. This will prevent an irresponsible Government from gaining undesirable popularity in an election year by ceasing to collect taxes or reduce the rates of taxes.

APPENDIX I - (continued)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

(3b) *Monitoring of budgets of
the Government, Govern-
ment companies and sta-
tutory boards*

Article 22A(6) and 22C(5) stipulates that the Elected President must be informed of any proposed expenditure that is likely to draw down the reserves accumulated by statutory boards and Government companies prior to the current term of office of the Government (herein referred to as frozen reserves).

Controls over the budget is not sufficient unless suitable checks are in place to verify the actual results with the approved budgets. It is felt that additional procedures ought to be in place to ensure that actual results conform with the budget.

In the annual reports of statutory boards and Government companies, the chairman and chief executive officer should certify that the actual results of the preceding year are in adherence to the budget to the extent that there is no draw down on the frozen reserves. The scope of work of the auditors should also be slightly widened to the effect that the audit reports should state that the budgets have been conformed with, to the extent that there has been no draw-down of the frozen reserve.

In the case of the Supply Bill and the annual estimates of the Government, the Accountant-General should confirm that results of the preceding year are in adherence to the budget to the extent that there has been no draw-down of the frozen reserves. As in current practice, these should also be certified by the Auditor-General in the normal course of his audit work.

Ideally, there should be an added responsibility of the chairman and chief executive officer of the statutory board or Government company to issue a supplementary report to the Elected President once they envisage that there would be a significant deviation from the budget which is likely to result in a drawing down of the frozen reserves. Similar responsibility should be vested on the Accountant-General in the case of the Supply Bill and annual estimates of the Government.

In summary, the above recommendations have the following inherent advantages:

- (i) The Elected President would only need to focus on the exceptions.
- (ii) As the procedures are self-regulating, there is no necessity to have a huge administrative staff to assist the Elected President.

APPENDIX I - (continued)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

(3b) *Monitoring of budgets of the Government, Government companies and statutory boards*

(iii) The additional requirements to have interim report and verification with actual results will provide an early warning system should there be any inadvertent draw-down of the frozen reserves.

(3c) *Investment decisions*

Apart from normal expenditure, careless or negligent or unwise investment decisions could also lead to a drawing down of reserves. However, their effect may not be immediately noticeable but could have very drastic effects on the frozen reserves.

However, we acknowledge that unnecessary control over investment decision may stifle initiatives of statutory boards and Government companies.

We recommend that the Elected President's approval be required for investments which are made out of the "frozen" reserves. The annual audit reports could also contain an appropriate certification that the necessary approvals have been obtained.

The budgets of statutory boards and Government companies should also distinguish the annual recurrent operating budget (which could be termed consumption expenditure) from the annual capital expenditure (which are capital investment designed to enhance the infrastructure or earnings potential of the entity).

For prudent financial management, the annual recurrent operating expenditure budget should be met by the annual revenue generated for that year. However, the capital expenditure budget should be scrutinized from a different perspective, after a review of the feasibility of the capital projects. Such reviews would cover returns on investment, risks involved, qualitative benefits, potential spin-offs to other sectors of the economy, and so on. All capital projects will have to indicate the future time scale of benefits and expenditure flows.

As an additional control, all statutory boards and Government companies must institute appropriate investment appraisal procedures. These procedures should conform to guidelines set by the Minister of Finance. For practicable purposes, some degree of flexibility should be allowed to vary such guidelines depending on the circumstances and the state of the economic environ-

APPENDIX I (continued)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

(3c) *Investment decisions*

ment of Singapore and the world and other relevant financial and economic factors. The audit report of these entities should also contain a certification that these investment appraisal procedures have been adhered to.

The Accountant-General should be assigned the following responsibilities:

- (i) Assist in formulating the investment appraisal procedures for the Minister of Finance and in approving appropriate modifications for the reasons indicated above.
- (ii) Ensure accountants in the statutory boards and Government companies are well versed with the investment appraisal procedures together with the approved modification and exception.
- (iii) To the extent possible, ensure budgetary control and investment appraisal procedures are standardized and uniform in all statutory boards and government companies. These will facilitate the necessary verification and certification proposed in the foregoing recommendation.

(4) *Budgets of Government companies* — Article 22C

Article 22C(2) provides that the boards of directors should present the budget of government companies to the Elected President for his approval. However, there is no mention as to whether this applies only to individual company budgets, or to consolidated budgets as well.

The budget of the holding company, by itself, will not reflect the overall financial position of the group of companies concerned. This is particularly the case where the holding company is just a dormant company holding shares in many operating subsidiaries.

On the other hand, consolidated budgets show the budgeted financial position of the group of companies as a whole. However, a significant aspect of consolidated budgets is that the losses of some companies may be made good by profits of other com-

APPENDIX I - (continued)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGA- PORE (AMENDMENT NO. 3) BILL

MATTERS ARISING

RECOMMENDATIONS

- (4) *Budgets of Government
companies*
- Article 22C

parties within the group. This provides flexibility to the holding companies management in allocating resources to specific projects which, although incurring losses in the short term, are expected to be profitable in the long term.

In order to rely as much as possible on a self-regulatory framework, the holding company's management should be entrusted with the responsibility of scrutinizing the operations of its subsidiaries. In this connection, the chairman and chief executive officer of each subsidiary could be required to certify to the holding company that its budget is not likely to draw down reserves not accumulated by that subsidiary company during the current term of office of the government. The holding company's chairman and chief executive officer should jointly approve any subsidiary company's budget for which there is a likelihood of the frozen reserves being drawn and in this context, they would have some flexibility as long as the consolidated budget preserves the frozen reserves.

- (5) *Accounting system of
the Government*
- Clause 2(e)

The accounting system of the Government operates on a cash basis. In Government financial statements, fixed assets and trade liabilities are not reflected. As an example, development expenditure on roads and other infrastructure are written off in the year they are incurred.

Clause 2(e) defines reserves to mean the excess of assets over liabilities. The accounting system of the Government should be converted to a commercial basis of accounting to ensure that all assets and liabilities are identified for the purpose of determining the reserves and ensuring that proper accounting controls are in place to protect such assets more effectively.

The Bill should also specify the rights of the Government relating to the managing of items such as non-financial assets. For example, the Bill should specify as to whether the Government can sell or mortgage

APPENDIX I - (*continued*)

REFERENCES TO THE CONSTITUTION OF THE REPUBLIC OF SINGA- PORE (AMENDMENT NO. 3) BILL

- (5) *Accounting system of
the Government*
— Clause 2(e)

MATTERS ARISING

RECOMMENDATIONS

non-financial assets (eg. rights for broadcasting, telecommunication) or unrecorded surpluses of assets stated at historical costs or nil value, which are not included in the statement of assets and liabilities of Singapore.

In addition, the Bill should specify as to whether the frozen reserves includes, as it should, such undisclosed surplus resulting from a revaluation of assets originally stated at historical cost, or nil value because of the cash basis of accounting. For example, revaluation surplus arising from the revaluation of Government buildings should be included in the frozen reserves.

Paper 28

From: Assoc Prof Valentine S Winslow
Faculty of Law
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Dated: 30th October 1990

RE: MEMORANDUM ON THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL 1990 - NO. 23/90

I enclose herewith my written submission on the above Bill for the scrutiny of Honourable Members of the Select Committee appointed to study the Bill.

I hope my representations and suggestions are sufficiently clear as they are and may be of assistance to the Committee in their deliberations. I have written them as an individual interested in constitutional matters and represent no institution.

I shall be willing, if invited, to appear before the Committee to elaborate on my views if given sufficient notice, as I otherwise expect to be away for a short vacation before the middle of November.

1. THE NATURE OF THE PRESIDENCY

1.1 This Bill makes a major change to the constitutional framework as it alters the nature of the Presidency substantially. First, the President is no longer to be a constitutional Head of State acting on the advice of the Cabinet on the British model and with the so-called "three rights - the right to be consulted, the right to encourage, the right to warn" (Walter Bagehot, *The English Constitution* (1867) Ch. 2). Second, he will no longer be a mere "fountain of honour", the symbol of the State who is politically neutral in the sense that he has no say in policy but merely carries out the advice of the government of the day. Instead, he must, by virtue of his several new discretionary powers, and the fact of being directly elected by the people, necessarily be a political creature. No one can wield discretionary powers and campaign for election and remain "non-political".

1.2 May I first make some remarks on conceptual matters before I comment on the clauses of the Bill. The first White Paper (Cmd. 10 of 1988, par. 20) suggested that the President "will not be an executive President" and that he and the Prime Minister together constituted a "two-key safeguard mechanism". (This was reiterated in the second White Paper (Cmd. 11 of 1990, par. 7)). At the time, it was only proposed that the President have two new discretionary powers, to safeguard financial assets and reserves, and to safeguard the integrity of the public services. Now, many more discretionary powers have been proposed in the second White Paper and enacted in the Bill. The emphasis has now shifted away from these overriding considerations. Thus, it is preferable to call the scheme, as a whole, a "two-headed executive", as it bears analogies to the French Presidency where executive power is shared between the President and the Prime Minister. The "two-headed executive" is the scheme in Sri Lanka and South Korea as well. Although the President will not be a true executive President, he certainly will become a **partly** executive President, unlike the Westminster model constitutional Head of State, or the Crown.

1.3 Also, the first White Paper (par. 33), quoted with apparent approval in the second White Paper (par. 7), stated that "The Parliamentary system of government will not be altered". This too may not be accurate as the primacy of the Prime Minister and the Cabinet will be significantly reduced, as power must be shared with the President on many matters. The large number of appointments that must be approved by the President and the possibility of many moneys being attributed to the "reserves" is capable of stifling the business of government substantially if the President and the Prime Minister are not in agreement.

2. QUALIFICATIONS OF THE PRESIDENT

2.1 **Clause 4** (new Article 18(2)) appears to provide for three qualifications: citizenship, being qualified to be a Member of Parliament, and satisfying the Presidential Elections Committee ("the Committee") that one "is a person with such experience and qualifications as are necessary for him to carry out effectively the functions and duties of the office of President." New Article 18(3) then **deems** certain categories of persons as having the requisite qualifications.

2.2 Article 18(2)-(3) are not satisfactorily worded for the following reasons:

- (i) clause (3) of Article 18 could be read restrictively by potential candidates and those who intend to make nominations, treating these categories as being exhaustive; and that the Committee's function is merely to verify that a person does indeed possess the qualifications listed in clause (3);
- (ii) the Committee itself may be reluctant to exercise its discretion, limiting itself to other persons, (say), who may have held such a listed office for less than 3 years, or may have been a chief executive office of a company with a paid-up capital of slightly less than \$100 million.
- (iii) the term "such experience and qualifications as are necessary ... duties" is vague and uncertain, clearer criteria needing to be provided as guidance to the Committee.

2.3 It is submitted that a list of persons "deemed" to be qualified as Presidential candidates (new Article 18(3)) is unusual and overly restrictive. It is not apparent why, for example, three years experience should be set as a yardstick. Also, there may be other eminent persons who are well-qualified. It would seem that none of our first four Presidents would have met the standards of the new Article 18(3)! Why should not Ambassadors, Consuls, and Trade Commissioners be included; or chairmen or chief executive officers of other statutory boards not listed in Article 22 (see Article 18(3)(b))? It is also submitted that if the President is to be advised by a Council of Presidential Advisors (new Part V A), there is no need for his having special qualifications in excess of those that the Advisors are to have themselves (new Article 37D, 37E)

2.4 The purpose of clause (3) in Article 18 appears to be to ensure that someone from the "establishment" will be a priority candidate for the Presidency to ensure a measure of political stability even if there is a change of government. However, if a President with moral courage is sought, who can stand up to the machinations of even a Machiavellian Prime Minister, a more independent person may be needed, as a former establishment individual who was not a politician may not have that courage, and a politician President who comes from the same party as the government may be tempted to carry on a friendly "Old Boys' Newtwok" relationship with the Cabinet and fail in his custodial role, I therefore submit that the restrictive nature of clause (3) could do more harm than it prevents by eliminating from consideration many men and women with the "moral fibre" to do the job, in exchange for a qualified person with a weak and acquiescent personality. It is preferable to merely allow a person to be a candidate if he is qualified to be a Member of Parliament, and instead impose a minimum age and period of citizenship and residence. For example, the constitution of the Republic of the Philippines requires the President to be 40 years of age and to have been resident for 10 years immediately preceding election. The South Korean constitution has the same age requirement and requires the President to be eligible for election to the National assembly. The Indian and USA constitutions require the President to be 35 years old or more. Thus, it is submitted, age and sufficient connection with Singapore will ensure some measure of competence, the real safeguard being the advice from the Council of Presidential Advisors.

2.5 However, if it is decided that clause (3) should in principle be retained, I respectfully suggest that Article 18(3) would be better worded along these lines:

"Without prejudice to the generality of clause (2)(c), a person with the experience and qualifications referred to in clause (2)(c) shall include a person who has held office for a period of not less than 3 years as-..."

3. ELECTION OF THE PRESIDENT

3.1 The Presidential Elections Committee itself is defined in **clause 2(c)** (amending Article 2(1)) as the committee "established under the provisions of any law made by the Legislature governing the conduct of elections to the office of President". It is important for the Committee's composition to be known or

understood for Article 18(2) to be meaningful. Paragraph 55 of the second White Paper refers to a separate Act of Parliament being drafted to cover this and the procedure for the election of President. It would have been preferable if that legislation had been available and had also been submitted to a Select Committee at the same time as this Bill. The first White Paper had indicated (par. 18) that "[a]n **impartial body** of 3 or 5 persons must assess and find a candidate to be adequate". For such a Committee to find a person with "moral authority", "courage and decisiveness" and relevant experience, it is imperative that the Committee be independent of the government - as with Election Commissions created by several countries' constitutions - and able to use their discretion wisely. To do this, their own experience and qualifications must be adequate and may need to be spelled out. Perhaps, their qualifications could be similar to those of members of the Presidential Council for Minority Rights or of Nominated Members of Parliament.

3.2 As no apparent procedure for election is provided in the Bill, it being a matter for separate legislation, it is submitted that it would not be satisfactory for the President to be elected by a "walkover", there being only one candidate. This scenario is very real if the new Article 18(3) is applied strictly, and no other candidate who is nominated is found to be qualified. As the President is to have certain "blocking" powers over the elected government, it is imperative that his direct election by the people reflects his mandate to use those powers. Thus, I submit that a single candidate should still go through a process of electoral endorsement, electors either approving or disapproving of him. He will then be declared elected if he gets a minimum percentage of positive votes. This may be 50%, or it could be as low as one-third of the votes. I would commend for consideration Article 67 of the Constitution of the Republic of Korea, clauses (1) and (2) of which read as follows:

- "(1) The President shall be elected by universal, equal, direct and secret ballot by the people.
- (2) If and when there is only one Presidential candidate, he shall not be elected President unless he receives at least one-third of the total eligible votes."

3.3 This clause (in substance, if not in wording) has merit for two reasons. First, it entrenches in the constitution (instead of referring to external legislation) the right of the electorate to elect a President by direct, free elections, for otherwise the new Article 17(2) does not make this clear, merely providing that "(t)he President shall be elected by the citizens of Singapore in accordance with any law made by the Legislature.." Thus, if this "law" were to provide for indirect elections, the citizens voting (say) for an electoral college who would then elect the President, this would be valid under Article 17(2) as proposed. Alternatively, even if direct election was provided for in the election legislation, a future Parliament could amend this legislation by a simple majority. Neither scenario would safeguard the right to the electorate to directly elect the President. Second, this clause would ensure that the President indeed has some mandate for the exercise of powers which may have the effect of thwarting the will of the elected representatives of the people and the government drawn from among them.

3.4 The new Article 19(1) provides that the President shall hold office for a period of 6 years. There is no bar to his re-election, *ad infinitum*. I would suggest that a limit to the number of terms the President may serve should be included in the constitution. The US constitution provides for a maximum of two full terms of four years each. The Sri Lankan constitution provides for a total of two 6-year terms, not necessarily only consecutive ones. The Philippine constitution provides for only **one** 6-year term. The South Korean constitution provides also for **one** 5-year term. Thus, there appears to be a belief in the value of renewal in the office. Perhaps the Amendment Bill should provide for only **one** full term, with the allowance of a part of a term before this; or for a prohibition of two consecutive terms. After all, a 6-year term already spans two terms of Parliamentary government. Twelve years of possible disagreement between one particular President and the government is perhaps too much for both the government and the electorate to bear.

4. DISCRETIONARY POWERS OF THE PRESIDENT

4.1 Generally, I welcome the grant of more discretionary powers to the President in new Article 20 and other provisions following, as I am in favour of more checks on the executive. Even if certain matters under Article 20(2)(g) and (h) are better left to judicial review, the removal of review leaves control by the President a lesser, but still preferable alternative to no control at all.

4.2 I do not find the provisions concerning the resolution of disagreement between the President and either the Cabinet or the Legislature particularly objectionable. As these provisions are fairly unique, it would be difficult to rely on any existing "conventions" of the constitution (either of the British system of government or of a local nature) to resolve differences. Thus, fairly detailed provisions are unavoidable, cumbersome as they may seem. I only make a few comments on problems which may arise.

4.3 Curtailment of the President's Powers

4.3.1 New clause (2A) in Article 5 attempts to entrench in the constitution the provisions relating to the Presidency by requiring a referendum. I doubt if this will really safeguard the position of the President; as it may make parts of the constitution of a merely technical nature too rigid and resistant to change. For example, if the Legislature, as an afterthought, wishes to include a few newly-created offices (which had not existed before) to the list of appointments requiring Presidential approval (Article 21), this too will require a referendum! So also, with amendments of a merely consequential nature, where there are clarifications or errors to be corrected, or an essential cross-reference to be made. On the other hand, some Articles, such as Article 22(3) and 22B(3), only require amendment by, it seems, **subsidiary legislation** - i.e., an order of the President published in the *Gazette* - an unusual procedure for constitutional amendment, to say the least. Also, no constitutional amendments at all are required in other situations, where, only legislation external to the constitution needs to be amended, such as a law providing for the election of the President (referred to in Article 17(2)); or a law

requiring the President to act after consultation with persons or bodies other than the Cabinet, in Article 20(5); or a law providing a Civil List for the President, under Article 22I. Then, under Article 22G, the President may refuse his assent to legislation (other than a constitutional amendment under Article 5(2A)) providing directly or indirectly for the "circumvention or curtailment of the discretionary powers conferred upon him by this constitution."

4.3.2 Article 38(4) of the Constitution of Malaysia is perhaps instructive. It reads:

"No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers."

4.3.3 An analogous argument may be proffered in relation to any alteration of the President's "position", including his powers and privileges. Thus, I submit that a simple provision allowing a constitutional amendment with a two-thirds majority of all Members of Parliament in all cases, provided the President consents, is adequate. Where legislation exists affecting the position of the President, including election procedure, the legislation should also require his consent, in addition to a simple majority in Parliament. A referendum should be confined to only the curtailment of the President's constitutional **discretionary powers** in the new Article 20(2) and those Articles specifically referred to in Article 20(2). There is no necessity for such a wide range of provisions requiring a referendum in Article 5(2A). It is absurd to so strongly entrench some minor provisions amongst those mentioned in Article 5(2A) whilst not entrenching even Part II (Article 3-5), the fundamental liberties, citizenship provisions or Articles 149 or 150 on emergency powers, in the constitution.

5. THE REMOVAL OF THE PRESIDENT

5.1 New Article 22K(1) allows for the President's office to be vacated, *inter alia* by removal from office in accordance with clauses (3) to (8). Essentially, first, a notice of a motion proposing removal and the "reasons for his removal" must first be given by the Prime Minister. Then a notice of a motion proposing an inquiry and the reasons therefor must be moved by one quarter of the total number of MPs and a resolution is passed by half the total number of MPs that an inquiry be held. A tribunal of 5 Judges is then appointed by the Chief Justice to hold an inquiry into the "allegations of misconduct or otherwise" made against the President and reported to the Speaker, which must report that in its opinion the President is "permanently incapable" of discharging his official functions "by reason of mental or physical infirmity" or that he has been "guilty of any of the other allegations" contained in the motion. He may then be removed by a resolution passed by three-quarters of the total number of MPs.

5.2 The removal procedure is itself unobjectionable as similar procedures exist in other constitutions such as those of Sri Lanka, South Korea or India, whether the actual process is one of "impeachment" or resolution after a report by a superior court. However, those constitutions are far clearer about the kind of acceptable reasons for removal. India and South Korea list "violation of the

constitution" as the primary ground for impeachment. Article 38(2)(c) of the constitution of Sri Lanka is similarly worded to new Article 22K(4)(b) as far as the nature of the findings in the report of the tribunal is concerned. However, there is no mention in Article 22K of what the **grounds** are for removal. On the other hand, Article 38(2)(a) of the Sri Lankan constitution states that the notice of a resolution (and the resolution itself) must allege, with full particulars of the allegation or allegations, that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of:

- (i) intentional violation of the constitution,
- (ii) treason,
- (iii) bribery,
- (iv) misconduct or corruption involving the abuse of the powers of his office, or
- (v) any offence under any law, involving moral turpitude.

5.3 Both the first White Paper (par. 36) and the second White Paper (par. 53) specified virtually identical grounds to those in Article 38(2)(a) of the Sri Lankan constitution, save for the omission of bribery (and this ground is possibly covered by some of the others). It is strange that the Bill omits reference to these. The inclusion of such a clause would be essential to prevent the President from being removed for vague or so-called "charges". Thus, almost anything can be disguised as "misconduct or otherwise" resulting in removal, and the tribunal of 5 Judges will not be a safeguard as the tribunal's role is merely to make a finding that the "allegations" made or "reasons" given are well-founded. So, if the allegation or reason is that the President had been drinking alcohol, or that he wrote a letter expressing his frustrations to the Prime Minister, that may be found to be correct by the tribunal, so that the President would be effectively removed. This cannot be the intention of the framers of the Bill. I would urge that the valid grounds for complaint be specified as the White Papers envisaged.

Paper 31

From: The Law Society of Singapore
1 Colombo Court #08-29/30
Singapore 0617

Dated: 31 October 1990

CONSTITUTION OF THE REPUBLIC OF SINGAPORE
(AMENDMENT NO. 3) BILL - ELECTED PRESIDENT

Pursuant to an invitation by the Minister of Law, the Council of the Law Society submits its enclosed Memorandum on the abovementioned Bill which it hopes will be of assistance to the Select Committee in its consideration of the provisions of the Bill.

C R RAJAH

President

The Law Society of Singapore

MEMORANDUM OF THE COUNCIL OF THE LAW SOCIETY OF
SINGAPORE ON THE CONSTITUTION OF THE REPUBLIC
OF SINGAPORE
(AMENDMENT NO. 3) BILL 23/90

INTRODUCTION

1. The Council makes no comments, favourable or adverse, on the concept of the Elected President but only offers its comments on the legal principles and details of the Bill.
2. The Council has not had as much time as it would wish to review this important, lengthy, novel and complex Bill. The following comments are therefore such as could be made in the time available.
3. *New Article 2 (Definitions)*

3.1 The definition of "term of office" gives rise to ambiguity. In paragraph (b) the phrase "the *next* Prime Minister" raises the query: what happens if the

same Prime Minister is re-elected? Presumably the intention is to define "term of office" in terms of a Government holding office from one general election to the next. If so, the word "next" before "Prime Minister" should be deleted. Even if the intention is that successive terms of the same Prime Minister should be counted as the same "term of office", further re-drafting of the definition will be necessary in view of the ambiguity created by the words "the next general election".

3.2 The definition of "Presidential Elections Committee" needs an amendment to cover the situation in the new Article 22M(3) and 22N(1), where an Acting President appointed by Parliament must be qualified to be elected as President. It is suggested that the words "or appointments" be inserted after the word "elections" in the penultimate line.

4. *New Article 17(2) (Election of the President)*

4.1 This provides for the President to be elected but does not provide for the basis for election. Presumably it would be by all electors registered under the Parliamentary Elections Act on the "first past the post" principle. If so, the Article should say so; otherwise the Legislature could establish an alternative basis for election in a law capable of amendment otherwise than under Article 5(2A).

4.2 The Presidential Elections Committee will be a critical body in determining what kind of person eventually becomes President. The ground rules for the establishment of the Committee (as well as the criteria for its decisions under Article 18(2)(c)) should therefore be set out in the Constitution to enable these ground rules to be entrenched.

4.3 However, the question arises as to whether (apart from the disqualifications in Article 45) any special qualifications should be laid down by law for a President since there is no similar pre-qualification process for Members of Parliament or even for the Prime Minister. If no-qualifications are necessary then there would be no necessity for the Presidential Elections Committee.

5. *New Article 18(2) (Disqualification of President)*

The decisions of the Presidential Elections Committee should be subject to judicial review.

6. *New Article 18(3) (Qualifications of President)*

6.1 It is not clear whether a former elected President would be deemed to be qualified for the office. While he is not in the list under Article 18(3) it may be argued that once he has qualified for his first election, a President can stand for future elections without having to pre-qualify under Article 18(2)(c). But can the Presidential Elections Committee, having declared a person qualified to stand in one Presidential election, disqualify that same person under Article 18(2)(c) for a subsequent election? The answer is not clear.

6.2 Article 18(3)(c) implies (by the words "incorporated or registered") that the term "company" includes foreign companies registered in Singapore. However,

since the term "company" under the Companies Act is defined to mean only companies incorporated in Singapore, it would be better if the term "company" were substituted by the term "corporation", which means a company wherever incorporated.

6.3 Under Article 18(3)(c) there is no requirement that the company concerned by a publicly listed company (see Paragraph 18(e) of the Government's first White Paper dated 29 July 1988). Is this omission intentional?

6.4 If a person comes within the list set out in Article 18(3), the Presidential Elections Committee cannot disqualify him from election under Article 18(2)(c) unless he is disqualified under Article 45. What if a person has held an office mentioned in Article 18(3) for more than 3 years but was dismissed from that office for misconduct?

7. *New Article 18(4) (Disabilities of President)*

It is unclear what the words "any other office recognised by this Constitution" are intended to refer to. Would it not be simpler to identify these offices? Alternatively, on the assumption that the President ought to hold no office, public or private, during the term of his Presidency, the Article could be re-drafted to impose a blanket prohibition against the President holding any form of office or employment and providing appropriate exceptions e.g. being the Patron of charitable or other non-profit and non-political organisations. (cf. Article 55(5) and 56(5) of the Malaysian Constitution). In any event, the disabilities of the President should be clearly defined, as violation of this Article may be a ground for removal.

8. *New Article 19(1) (Term of Office)*

There is no limit to the number of terms of office a President may hold. Presumably this is intentional.

9. *New Article 20(2)(a) (Appointment of Prime Minister)*

There should be a cross-reference to Article 25(1) to avoid any suggestion of conflict between these two provisions. The President's discretion must be exercised having regard to the criteria in Article 25(1).

10. *New Article 20(2)(d) (Concurrence to debt incurred by Government)*

The reference to "debt" should be deleted. See comments under Paragraph 42.2 below.

11. *New Article 20(5) (President to act on recommendation)*

The new Article 20(5) (which in fact repeats the existing Article 21(3)) specifically allows a law which will require the President to act on the recommendation of someone other than the Cabinet. In the first place, it is not clear what situations Article 20(5) is meant to cover. In the second place, it would seem

inconsistent with the New Article 20(1), which requires the President to act in accordance with the advice of the Cabinet except as otherwise provided by the Constitution.

12. *New Article 21 (Appointment of public officers)*

Consideration may be given to including the following persons in the list: -

- the Chairman and members of the Presidential Council for Religious Harmony (who are presumably as important as the Chairman and members of the two Councils already included);
- the Chairman and members of any advisory board constituted under Article 151 of the Constitution (otherwise the force of the new Article 151(4) may be lost).

13. *New Article 22(3) (Statutory Boards)*

13.1 It is public knowledge that certain of the statutory boards named are likely to be privatised at which point those boards will:

- lose most, if not all, of their reserves; and
- become different entities from what they are now.

Under such circumstances, is it still the intention that these statutory boards should remain the subject of Article 22? If not, a constitutional amendment would be necessary to remove them from Article 22. Presumably the President would be prepared to waive the requirement of a referendum under the new Article 5(2A). However, a two-thirds majority of Parliament would still be necessary under Article 5(2).

13.2 In the Government's first White Paper (Paragraph 45) two other statutory boards were mentioned as coming within the purview of the President's jurisdiction, viz. Singapore Broadcasting Corporation and Civil Aviation Authority of Singapore. Is their omission deliberate?

14. *New Article 22(4) (Reserves of statutory boards)*

The Article does not state what will be the material date for determining when the total value of the reserves of the statutory board amounts to \$100 million or more. It also does not state whether the statutory board will remain subject to Article 22 if the reserves subsequently fall below \$100 million. Drafting changes should be made for clarification.

15. *New Article 22A(1) (Expenditure of statutory boards)*

15.1 The words "incur expenditure for which no provision is made in budget" are unclear in meaning. Consider the following situations: -

- * The President has approved a budget allowing for expenditure on salaries of \$5 million for the financial year. Can the statutory board

incur expenditure for salaries in excess of \$5 million on the argument that *some* provision has been made for "salaries"? The answer is probably no, but the wording could be clearer.

- * The President has approved a budget allowing for a total expenditure of \$20 million for the financial year including an amount of \$5 million for salaries and \$2 million for rentals. At the end of the financial year the statutory board has spent a total amount of \$20 million but has incurred \$6 million for salaries, having been able to reduce its rental expenditure to \$1 million. Has Article 22A(1) been breached? The answer to this is unclear.

The President has approved a budget for a total expenditure of \$20 million for the financial year. No provision has been made in the budget for any new projects. The statutory board undertakes a new project but is able to keep its total expenditure to a total of \$20 million by reductions in other areas. Has Article 22A(1) been breached? The answer is again unclear.

- * The President has approved a budget for a total expenditure of \$20 million for the financial year, income having been estimated (and approved) at \$25 million. At the end of the year total expenditure is \$24 million but income is \$30 million. Has Article 22A(1) been breached? Yet again the answer is unclear.

15.2 In this Article expenditure is considered without regard to budgeted revenue. Is this deliberate?

15.3 Presumably any proposals for privatisation of a statutory board listed in Article 22(3) will require the approval of the President under 22A. Perhaps specific reference ought to be made to privatisation or other disposal of assets for the sake of clarity (see Paragraph 48 below).

16. *New Article 22A(3) (Approval of Budgets of statutory boards)*

16.1 This clause requires the President to publish his opinion that a budget is likely to draw down reserves which were not accumulated during the current term of office of the Government. Strangely, however, the President is not required to publish (i) his approval of such a budget (ii) the reasons for his approval (iii) his disapproval of a budget. Should all these not likewise be gazetted?

16.2 Purely as a matter of English, the term "draw down" seems inappropriate in relation to reserves. The normal term is "draw on" or "reduce".

16.3 The words "when implemented" should be inserted after the words "the budget" in line 4 to clarify its meaning. For similar reasons the words "the implementation of" should be inserted before the words "the budget" in line 9.

16.4 The basic problem with this Article is that no criteria is laid down by which the President may arrive at his opinion. Must he accept the budgeted figures

at face value or can he reject estimated expenditure as too low and estimated revenue as too high? (see Paragraph 43.1 and 45.1 below).

17. *New Article 22A(4) (Effect of non-approval of budgets)*

The effect of this Article seems to be that the statutory board may spend the same amount of money as in the last approved budget and no more. However, if the amount of expenditure in the last approved budget, when repeated in the financial year in question, would cause a drawing on reserves which were not accumulated during the current term of office of the Government, there appears to be no remedy to stop this.

18. *New Article 22B(Directors of Government Companies)*

18.1 Many of the earlier comments made in relation to Article 22 will also apply here.

18.2 Presumably the privatised companies which will acquire the assets of statutory boards will be gazetted under Article 22B(3).

18.3 In Article 22B(4)(a) the phrase "shareholder's funds" should read "shareholders' funds" as those funds belong to all shareholders.

19. *New Article 22C (Budgets of Government Companies)*

19.1 Many of the earlier comments made in relation to Article 22A will also apply here.

19.2 In view of the definition of "director" in Section 4(1) of the Companies Act ("and includes a person in accordance with those directions or instructions the directors of a company are accustomed to act") it may be prudent to add a rider somewhere in the Bill that the President should not be considered a director of any Government company by reason only of his exercise of his powers under the new Article 22C.

19.3 It is noted that there is no equivalent duty as set out in Article 22C(5) for officers of statutory boards. Is this deliberate? (cf. New Article 144(3)).

20. *New Article 22F (Concurrence of President for certain investigations)*

Under the Prevention of Corruption Act there is no requirement that the Prime Minister must give his consent for any investigation, whether of a Minister or otherwise. Presumably the necessity for this provision arises from the fact that the Director of the CPIB reports directly to the Prime Minister. This relationship could, however, be changed at any time. Perhaps the words "the Prime Minister" in line 1 could be qualified by the words "(or such other Minister or person for the time being having the responsibility for the conduct of the Director)".

21. *New Article 22G(1) (Circumvention of powers of President)*

21.1 The words in brackets would read better as follows: -

"(other than a Bill which has satisfied the requirements of Article 5(2A))".

The wording in the Bill only refers to Articles 5(2A) without actually saying that the referendum must have been successfully held.

21.2 Some difficulty arises with the concept of "circumvention ... of the discretionary powers conferred upon the President", particularly when it applies to laws which may indirectly circumvent such powers. "Circumvent" simply means "to get around" and it is a general principle of law that people are entitled to order their affairs so as to avoid bringing themselves within the scope of certain laws (see for example the revenue cases). It may be difficult for a Court of law to make a ruling on this point as there is no legal authority on the meaning of "circumvent". Some other verbal formula ought to be considered.

21.3 Possibly the scope of this Article might be extended to include bills relating to presidential elections and the Presidential Elections Committee.

21.4 The marginal note appears incorrect in that a Bill can be caught by this Article even if it is not designed to circumvent or curtail the powers of the President, so long as it has that effect.

22. *New Article 22G(2) and (3) (Wrongful withholding of Presidential Assent)*

These Articles should be extended to apply to all Bills where it is contended that the President has wrongfully withheld his assent (e.g. under Article 22D). Further, suppose the President were to refuse his assent to a Bill without citing any Article? This would clearly be wrongful (see new Article 20(1)) but the Bill could not become law. There should be a mechanism whereby the Government can pass legislation where the Presidential Assent is wrongly withheld. The principles laid down in the new Articles 22G(2) and (3) seem capable of general application.

23. *New Article 22I (Civil List)*

The civil List should contain adequate provision for the President's costs and expenses in obtaining professional advice and services in the discharge of his enhanced duties under the amended Constitution.

24. *New Article 22J(1) (Immunity of President from suit)*

As drafted, this Article will confer immunity on the President only during the term of his office. It is suggested that his immunity should extend forever in respect of his official acts while his immunity in respect of private acts should remain as in the draft Bill.

25. *New Article 22J(3) (Challenge to decisions of President)*

This Article should be extended to any proceedings instituted in a Court with a view to determining whether the President has exercised his powers under the

Constitution lawfully. If, for example, a Government company or statutory board disagrees with the President's refusal to approve its budget, there would be no means whereby that statutory board or Government company could challenge the President's decision in Court. If his opinion under Article 22A or Article 22C is completely without foundation or even not *bona fide* held, there will be no remedy under the existing Bill except the drastic remedy of removal under Article 22K. It is important to note that judicial review does not mean that the President's decisions will be the subject to appeal as such; in other words the Courts will not second-guess the President. Judicial review only means that the President's decisions may be challenged if they are illegal, irrational or procedurally improper.

26. *New Article 22K(4)(b)* (Removal of President)

26.1 There is a fundamental difficulty about this paragraph. A tribunal holding an inquiry is not given any criteria by which to judge the President. The allegations made against the President may be "of misconduct or otherwise". In the first place, what would constitute misconduct on the part of a President? In the second place, what other allegations *not amounting to misconduct* would be sufficient to justify a removal from office? In both White Papers (Paragraph 36 and 53 thereof respectively) the Government stated grounds for removal of the President but these have not been repeated in the Bill. While not all the grounds stated in the White Papers may necessarily be appropriate or exhaustive, it would be desirable for the grounds to be publicly discussed and entrenched in the Constitution.

26.2 The tribunal can report to the Speaker that in its opinion:

- * the President is incapable of discharging his office by reason of mental or physical infirmity; or
- * the President has been guilty of any of the other allegations contained in the motion referred to in Article 22K(4)(a).

First, mental or physical infirmity are not mentioned anywhere else in Article 22K(4) and it appears that the tribunal can arrive at its opinion as to the President's infirmity without any charge being made on this ground.

Secondly, the words "allegations of misconduct or otherwise" are not linked to the motion under Article 22K(4)(a) (which uses the words "reasons for removal"); is it intended that separate allegations can be made other than in the motion? (see however new Article 65(3A)(b)). If so, how would these allegations be made and must these allegations be the same as the reasons for removal?

Thirdly, the function of the tribunal is to form an opinion (presumably of fact) either that the President is permanently incapable of discharging the functions of office or that the allegations made in the motion (which presumably constitute the reasons for removal referred to in paragraph (a)) have been proved.

26.3 Since no criteria for removal of a President are laid down in the Constitution, the tribunal would effectively not be making a decision (or even a recommendation) on the issue of whether the President should be removed. Its

inquiry would have to be confined to whether the allegations made by the Prime Minister have been proved. This may be difficult if the Prime Minister advances reasons for removal which, even if proved, may not be universally accepted as grounds for removal. The tribunal would then be put in the position simply of making a finding on the reasons without being able to express an opinion as to whether such reasons are valid reasons for the removal of the President. To illustrate:

- * The Prime Minister gives as the reason for removal the alleged fact that the President gambles every night. No allegation of incompetence or other misconduct is made. The job of the tribunal would then simply be to determine whether or not the President does gamble every night. Possibly this was exactly what was contemplated by the draftsman because it would then be for Parliament to decide whether or not the fact of gambling every night would be sufficient grounds to remove the President.
- * A more difficult situation arises where the Prime Minister gives as the reason for removal the alleged fact that the President has been behaving in such a manner as to bring the office of the Presidency into disrepute e.g. by gambling every night. The tribunal may be able to make a finding that the President does gamble every night but would it be in a position thereby to conclude that the office of the Presidency has been brought into disrepute? The President may only gamble in private and may not cause any embarrassment to himself or others.

26.4 There are 5 issues here:

- * Should objective criteria for the removal of the President be established under the Constitution?
- * What should be the role of the tribunal in the removal process?
- * Should the decision of the tribunal be subject to judicial review? If so, by whom, since the tribunal will consist of 5 Supreme Court judges?
- * What should be the role of Parliament in the removal process? Can fresh evidence be produced in Parliament and the allegations of fact re-argued?
- * What are the procedures necessary to conduct the removal process in a dignified fashion which will command the respect of the nation?

26.5 The difficulty of establishing objective criteria is that they may not be completely factual or legal criteria but might involve a degree of subjective political judgment. In the latter case, bearing in mind that the Parliament which would seek to remove a President would most likely be a Parliament of a different political persuasion from the President, it would be dangerous to allow the function of removal to be exercised by Parliament. On the other hand, if a political judgment is involved, a judicial tribunal may not be the most appropriate body to decide (or even make a recommendation) on the question of removal.

26.6 An analogy may be found in the procedure set out in the Constitution under Article 98(3) for the removal of judges but the difference is that:

- * a tribunal under Article 98(3) makes a recommendation to the President on whether a brother judge should be removed and not a decision or a finding;
- * there is a body of common law dealing with the criteria for the removal of judges and fellow judges are the best persons to decide whether a brother judge has been guilty of such misconduct as to justify his removal. It cannot be said that judges are the best arbiters of whether the President should be removed unless non-political criteria are written into the Constitution.

26.7 Article 22K(4)(b) needs to be strengthened by providing that the Chief Justice shall establish his tribunal and cause the tribunal to hold its inquiry by a particular time.

27. *New Article 22K(5) (Allegations of infirmity or other than misconduct)*

This Article lays down procedures which must be observed where the *conduct* of the President is the proposed subject of inquiry. But if the inquiry is into the question of infirmity, or allegations other than misconduct, it seems that Article 22K(5) would not apply. Is this intended?

28. *New Article 22K(7) (Witnesses and Cross-Examinations)*

28.1 There should be specific reference to the right of a President to call witnesses in his defence and to cross-examine witnesses appearing against him.

28.2 Provision should also be made for the report of tribunal to be made public. (cf. new Article 37K).

29. *New Article 22K(8) (Procedures for removal of President)*

It is important that the procedure be established in the Constitution and not be left to the tribunal.

30. *New Article 22L (President not duly elected)*

If the Election Judge determines that the election of the President was void it is not clear what will be the legal effect of the acts of such a President prior to such determination. Article 22L(3) purports to deal with the point but it does not go far enough.

31. *New Article 22L(3) (Validating Article)*

In effect-any acts of the putative President will not be invalid by reason *only* of the fact of the determination by the Election Judge. But, as a matter of law, the acts of a void President may be null and void even without the declaration of the Election Judge. What is needed (assuming that it is intended to recognise all acts of

the putative President prior to the determination of the Election Judge as lawful) is a validating clause as the one found in Article 89 of the 4th Schedule to the Companies Act (specifying a standard clause for most private and public companies):

"All acts done by any meeting of the directors or of the committee of directors or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director."

32. *New Article 22M(1) and (2) (When office becomes vacant)*

The concept of "unavailability" in these clauses is strange. Does this mean that the Chief Justice and the Speaker may decline to accept the post of President on the grounds of other pressing duties? If so, the clauses should say so. If the concept is simply to cover the situation where the Chief Justice (or the Speaker) is out of Singapore on an extended trip then again this should be stated. Furthermore, who is to determine whether either the Chief Justice or the Speaker is "unavailable"? Is it a subjective decision of the Chief Justice or the Speaker? If not, will the decision be by Parliament or the Courts (or some other body)?

33. *New Article 22N(Temporary Disability of President)*

33.1 The words "one of the persons referred to in Article 22M" are unclear in meaning. Which of these persons shall exercise the function of the President? If the order of precedence in Article 22M is intended, then those words could be substituted by the following: —

"...or any other written law, the provisions of Article 22M shall apply, *mutatis mutandis*, as if the period of temporary disability were the period referred to in Article 22M."

33.2 The Article does not say who will determine whether the President is temporarily unable to perform his functions. The question arises as to whether the issue will be determined by the President himself or some other body such as Parliament or the Courts (or even the Council of Presidential Advisers). In any event, such a decision must be subject to judicial review as it will be a question entirely within the competence of the Courts.

33.3 It is noted that if the Chief Justice or the Speaker act as President neither of these persons will need to be appointed by Parliament and will be able to serve even though they may not have held office for more than 3 years (which is a necessary qualification for election as President). This means that the provisions of Article 22N(2) will not apply so that the President will not be able to veto

the appointment of the Chief Justice or the Speaker as Acting President. The question of course remains: Can the President challenge (or even decide) the question of his own temporary disability?

33.4 It may be preferable for the Chief Justice not to act as President under Article 22N, in case the question later arises whether the temporary disability of the President has become permanent so as to justify removal under Article 22K, which would then involve the Chief Justice in a position of conflict of interest.

33.5 The question arises: how temporary is "temporary"? If a President falls ill in the 5th year of his term and will be unable to resume his duties until after the expiry of his term, will that be considered a temporary disability?

34. *New Article 37C (Temporary appointments)*

Should provision be made for temporary appointments to the Council of Presidential Advisors where a member is unable to inform the Chairman of his incapacity? Should mental or physical infirmity be grounds for removing a member of the Council? (cf. the disqualification applicable to members of the Presidential Council for minority Rights under Article 72).

35. *New Article 37E(c) (Disqualification of members)*

See comment under Paragraph 5 above. There is an anomalous distinction between this Article and Article 45(1)(e). This paragraph applies to convictions in a foreign country whereas Article 45(1)(e) only mentions Malaysian convictions. It is suggested that this Article is more logical and that Article 45(1)(e) be amended accordingly. In both cases, however, the sum of \$2,000/- should be revised to something more realistic. There should also be added the words "or its equivalent in foreign currency at the date of conviction" to take into account fines imposed by a foreign court.

36. *New Article 37G(2) (Questions as to membership)*

It is unclear why the decision of the tribunal should not be subject to judicial review. The question of the validity of a member's appointment is entirely a question for a Court of law and should be subject to judicial review. In view of the fact that the Chairman is a High Court Judge, such review should be by a Court of three High Court judges or Judicial Commissioners. The member concerned should also have the right to Counsel and to cross-examine witnesses.

37. *New Article 37J (Proceedings of Council)*

It is unclear why the Council of Presidential Advisers should not be entitled to hear objectors or examine witnesses with regard to any matter which is being considered by the Council. This seems an unnecessary fetter on the ability of the Council to seek assistance in formulating its views.

38. *New Article 65(3A) (President not to dissolve Parliament)*

38.1 The proposed amendments to Article 65(3) are meant to prevent a President from stopping his removal from office by dissolving Parliament. However, there may be situations where the President may not agree to dissolve Parliament to prevent a Prime Minister who has the support of a simple majority of MPs from increasing his majority. Although Article 65(3) currently provides that the President is obliged to act on the advice of the Prime Minister in such situations, the President cannot be forced to do so and the Prime Minister does not have the three-quarters parliamentary majority to secure his removal. Should Article 65 be further amended to provide that, if not sooner dissolved, Parliament shall stand dissolved at the end of a specified period after a resolution requesting such dissolution has been passed by an absolute majority of the total number of MPs?

38.2 However, the rationale for this Article is not clear. Under the existing Article 65(3) (which remains in force) the President can only dissolve Parliament if he is advised by the Prime Minister to do so, and he cannot do so otherwise. Presumably the scenario envisaged is:

- * where notice has been given of a motion under Article 22K(5) but the Prime Minister is in league with the President to defeat the intentions of Parliament by requesting for a dissolution; or
- * as above, but the President exercises his personal discretion under the existing Article 26(1)(b) to dismiss the Prime Minister and appoints his own associate as Prime Minister under the new Article 20(2)(b) and the new Prime Minister then requests for a dissolution.

38.3 If this Article is to remain it should be strengthened by inserting the words "or prorogue" after "dissolve" in line 1.

39. *New Article 26 (President dismissing Prime Minister)*

Under the existing Article 26 (unaffected by the Bill), the President may, acting in his discretion, declare the office of Prime Minister vacant. As the President may not be removed unless a motion proposing such removal is given by the Prime Minister (the proposed Article 22K(4)(a)), the President may remove the Prime Minister to prevent his own removal. Should Article 26 be amended either to prevent the President from removing the Prime Minister once notice is given proposing an inquiry into his own conduct (similar to the curtailment of the President's powers in the proposed Article 65(3A) or to vest the power to remove the Prime Minister in Parliament itself?

40. *New Article 93A(1) (Election Judge)*

It is unclear whether the words in brackets refer to the Chief Justice as well as the nominated judge. Some redrafting for clarification would be helpful. Is it

intended that a Judicial Commissioner would qualify? If so, some amendment will be necessary. In fact, there should be clarification throughout the Constitution of the occasions where the term "Judge" could be substituted by "Judicial Commissioner".

41. *New Article 93A(2) (Finality of decision of Election Judge)*

It is unclear why the decision of the Election Judge should be final. This is a matter of great importance and is eminently a question for a Court of law and should be subject to appeal in the usual way. It might be argued that it is important to have validity of the Presidential Election determined as quickly as possible, but this problem can be overcome by providing for an expedited appeal within (say) 7 days after the decision of the Election Judge. It is noted that the decision of an Election Judge under Section 95 of the Parliamentary Elections Act is also final but the argument in this paragraph also applies to that Act.

42. *New Article 144(1) (Restriction on loans and guarantees)*

42.1 It is suggested that this Article may be more simply expressed by deleting paragraphs (a), (b), (c) and the first half of paragraph (d) so as to read:

"No debt, guarantee or loan shall be incurred, given or raised by the Government, except with the concurrence of the President".

It may be argued that this does not take into account the exception under paragraph (c) - "except under the authority of any other written law" - but paragraph (c) itself appears to be a potential loophole which the Government of the day could exploit to overcome the provisions of Section 144(1). If paragraph (c) remains, then the Government, notwithstanding the restrictions of Section 144(1), could simply enact other legislation authorising it to borrow money without the authority of the President. The President may invoke the new Article 22G to challenge such legislation but the Government could claim the authority of the new Article 144(1)(c). How then would the impasse be resolved?

42.2 Furthermore, the word "debt" should be deleted, otherwise the Government would not be able to enter into any contracts for the purchase of goods or the supply of services even though it did not involve borrowing or guarantees. (There is no reference in the new Article 144(2) to "debt").

43. *New Article 144(2) (Restriction on loans and guarantees)*

43.1 It is unclear on what basis the President may form his opinion that the Bill would be "likely to draw the reserves of the Government...". Should not some criteria be established? Consider, for example, the following scenarios: —

- * a Bill proposes the borrowing a sum of \$50 million repayable over 10 years. The budgets presented by the Government to Parliament indicate that the surplus of Government revenue over expenditure for the next 10 years will enable the Government to make principal

repayments towards the loan of \$5 million a year. The President does not believe the budgeted revenues and/or expenditure are achievable by the Government. Can the President withhold his assent?

- * Same as the first scenario, except that the terms of the loan are that the loan does not become payable as to principal until 6 years after the loan is first disbursed and the Government (which only has a term of office 5 years), has no budget or projections for the period after its term of office. Is the President in a position to say that in 6 years' time the Government of Singapore will not be able to service its loan repayments from reserves accumulated after the passage of the Bill?

43.2 It is also noted that there is no provision in the Bill to restrain Government companies and statutory boards from borrowing. However, on the assumption that Government companies and statutory boards will not be able to incur any expenditure which has not been approved by the President (despite the doubts expressed earlier in this Memorandum as to the interpretation of the relevant Articles) these provisions will probably restrain Government companies and statutory boards from borrowing (and possibly even from giving guarantees). This is because, unless payments of interest and principal on borrowed monies are included in the annual budget for approval by the President the Government companies and statutory boards would not be able to make such payments. Indeed, the provisions may even inhibit borrowing with the approval of the President because there is no provision for the President to approve any medium or long-term borrowing as such by statutory boards and Government companies and the President's approval is required for budgeted expenditure in each year. How therefore would statutory boards and Government companies negotiate loans where the lender could not be assured that the President would give his approval for repayment of principal and interest in each year?

44. *New Article 144(4)(d) (Financial Procedure Act)*

Presumably the reference to the Financial Procedure Act is necessary because of Section 15 of that Act (no guarantees binding on Singapore unless entered into with the written authority of the Minister or in accordance with law). Section 15 itself will have to be amended in due course to remove the power of the Minister to commit Singapore to liability under guarantees.

45. *New Article 148A(1) (Supply Bill)*

45.1 Again, no criteria is laid down for the President to form his opinion that a Supply Bill is likely to draw on the reserves which were not accumulated by the Government during its current term of office. Presumably the Supply Bill will have to be read in the light of the annual estimates of revenue and expenditure presented to Parliament under the new Article 147. If the annual estimates themselves

indicate that there is to be a deficit budget for the year then presumably the President would have valid grounds for his opinion but, as remarked in Paragraph 46 above, what if the annual estimates are based on the Government's estimates which the President does not accept either because he thinks that the estimated Government revenue is too high or the estimated Government expenditure is too low?

45.2 As commented earlier (Paragraph 16.1), the President, in gazetting his opinion, should also gazette his reasons for his assent to the Bill as well as his disapproval of any Supply Bill.

46. *New Article 151(4) (Internal Security Act)*

It is assumed that there is no intention to entrench the Internal Security Act itself within the provisions of the new Article 5(2A).

47. *Paragraph 37 of the Government's first White Paper dated 29 July 1988*

In this paragraph it was stated that the President shall have the right to attend address and to send message to Parliament. This has not been provided for in the Bill. Is this omission intentional?

48. *Paragraph 45 of the Government's first White Paper dated 29 July 1988*

In this paragraph it was stated that Constitutional amendments would be made to prevent (amongst other things) disposal of Government assets (including land and immovable property) and capital assets of other Government agencies, statutory boards and Government companies. No specific measures in this regard appear in the Bill. Is this omission intentional?

49. *General*

It is noted that no sanctions are provided for the breach of any of the duties or obligations created by the proposed amendments.

50. *Conclusion*

The Law Society would be prepared to have its representatives attend before the Select Committee to clarify this Memorandum.

MINUTES OF EVIDENCE

<i>Representors</i>		<i>Pages</i>	<i>Columns</i>
Mr Shriniwas Rai	)	C 2-7	1-12
Mr Kenneth Chew	)	C 8-12	13-22
Mr Vincent Tay Shian Poh	)	C 13-16	23-30
<i>Representing the National University of Singapore Law Club:</i>			
Mr Khaleel Namazie, Secretary	}	C 17-23	31-44
Mr Sean Ng, Member			
Mr Bernard Tan, Member			
Mr Anil Kumar Samtani, Member			
<i>Representing the Law Society of Singapore:</i>			
Mr C.R. Rajah, President	}	C 24-30	45-58
Mr Warren Khoo, Vice President			
Mr Michael Hwang, Chairman, Legislation & Special Assignments Committee (Civil)			
<i>Representing the Institute of Certified Public Accountants of Singapore:</i>			
Mr Keith Tay, President.	}	C 32-44	61-86
Mr Tan Kok Hiang, Council Member			
Mr Kenneth Chew Keng Seng, Member			
Mr Lim Hock San, Council Member			
Mr Gerard Ee Hock Kim, Council Member			
Mr Don Ho Mun-Tuke, Council Member			
Mr Lee Wai Kok, Executive Director			

MINUTES OF EVIDENCE - continued

<i>Representors</i>		<i>Pages</i>	<i>Columns</i>
<i>Representing the National University of Singapore Democratic Socialist Club:</i>	}	C 45-51	87-100
Mr Hoon Dah Hao, President			
Mr Edwin Pang, Assistant General Secretary			
Miss Tang Meen Er, Public Relations Secretary			
Mr Gary Chan, Publication Secretary			
Mr Goh Keng Hock, Assistant Public Relations Secretary			
Mr Charan Singh, Member	}		
Mr Walter Woon	)	C 52-58	101-114
Assoc. Prof. Valentine S. Winslow	)	C 59-66	115-130
Mr Wee Han Kim	)	C 67-70	131-138

MINUTES OF EVIDENCE

SELECT COMMITTEE ON THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

WEDNESDAY, 14TH NOVEMBER 1990

10.30 am

PRESENT:

Mr Speaker (*in the Chair*)

Mr Abdullah Tarmugi	:	Prof S Jayakumar
Mr S Chandra Das	:	BG Lee Hsien Loong
Mr Chiam See Tong	:	Dr Ong Chit Chung
Mr Davinder Singh	:	Dr Ow Chin Hock
Mr Goh Chok Tong	:	BG George Yong-Boon Yeo

ABSENT:

Mr S Dhanabalan (*on leave of absence*).

In attendance:

Attorney-General's Chambers:

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

Ms Tan Peck Cheng, Deputy Senior State Counsel.

Mrs Owi Beng Ki, State Counsel.

Auditor-General's Office:

Mr Chee Keng Soon, Auditor-General.

Mr Teo Chee Khiang, Deputy Auditor-General.

Ministry of Finance:

Ms Low Sin Leng, Deputy Secretary (Budget Division).

Mrs Pek Siok Ching, Director (Revenue Division).

MINUTES OF EVIDENCE

1

14 NOVEMBER 1990

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Chairman] I call the meeting to order. Can we have the first witness?

Paper No. 9- Mr Shriniwas Rai of Hin Rai & Tan, No 2, Finlayson Green, #07-05, Asia Insurance Building, Singapore 0104, was examined.

Chairman

1. Good morning. Please be seated. Could you state your name and occupation for the record? - (*Mr Shriniwas Rai*) Sir, my name is Shriniwas Rai. I am an advocate and solicitor, living at No. 25 Jalan Manis.

2. Thank you for your written submission on the Bill. The Committee has also received your letter of 12th November and we shall take note of the amendments? - (*Mr Shriniwas Rai*) I am obliged to you, Sir.

Mr Goh Chok Tong

3. Mr Rai, you have stated categorically that you support the Bill? - (*Mr Shriniwas Rai*) Yes.

4. And you have given the reason that, to quote you, "We have everything to gain and nothing to lose.". Would you like to elaborate on why there is nothing to lose with this Bill? - (*Mr Shriniwas Rai*) Sir, we are going to have an Elected President. Previously, the citizens did not have this right. Now he has this choice given to him. But leaving that aside, Sir, the most important thing is that, as matters stand now, our assets are unguarded. You can have a simple majority of the House, 41 Members against 40, and you could do anything with the fund. But with this mechanism, there is this added safeguard that whoever is the Prime Minister

or the Cabinet would have to think twice, because he would not only have to face the electorate but also to convince the President of the fund he is going to use. Furthermore, there is no limitation that the fund cannot be used. The reserves could be used provided the President is satisfied and provided there is a need. Secondly, Sir, in the context of Singapore, one of our greatest assets has been our human resources. Our Civil Service is one of the best in the world and we can pride ourselves on this. The Prime Minister has time and again pointed this out. I am of the view that with this amendment, there will be an extra safeguard. The integrity of the Civil Service would be safeguarded because no matter how efficient the political machinery is, if you do not have an honest, dedicated Civil Service, you are not going to deliver the goods. Thirdly, Sir, the ISA, the CPIB and the Maintenance of Religious Harmony Act, the President is going to have an extra check and this, I think, as a citizen, I welcome the Bill. This is why I have said that I am in support of this Bill with certain reservations which I have mentioned in my paper.

5. You appeal that the President should be above party politics and he ought to be regarded as non-partisan. Would you want to elaborate on the meaning of "above party politics" and "non-partisan"? - (*Mr Shriniwas Rai*)

MINUTES OF EVIDENCE

3

14 NOVEMBER 1990

4

Sir, I am not suggesting that this be entrenched in the Constitution. I am suggesting to this Committee that we should have a constitutional convention that the moment he decides, whoever the Presidential candidate is, to stand for election, he should cut off his political ties. I am not saying that just because you are a member of a political party, your sin is that you cannot stand for the Presidential election. I am saying he must be seen from the eyes of the ordinary citizen, that he is not going to favour either the Government or the Opposition. He is somebody who is going to be the people's President.

6. Yes. If he cuts off his ties from a political party, what if he stands for re-election the next time? Could he be supported by the same party which helped him to be elected? - (*Mr Shrinivas Rai*) I have not commented on it in this paper because it is out of the scope of the Bill. It is for the Presidential Elections Committee. But I am of the view, Sir, that we should not have the American system of Presidential election where great finance, great publicity, and valuable time are wasted in going through the hustings. I am suggesting to this Committee that we should have a much more saner, much more practical process, where we could, instead of the President going to face the electorate in the street, have a media coverage. And I think the President, if he is a man of integrity, he can stand up, without the aid of any political party, put his past performance, whether in the government or in the field of commerce, and let the public judge for themselves.

7. If we follow the election procedure for Members of Parliament, would that

be acceptable to you? Because you know that there are certain checks on finances, there is a limit to how much a candidate can spend per voter. There is a constraint on expenditure? - (*Mr Shrinivas Rai*) Sir, I am aware of the Parliamentary Elections Act. But what I would like is in fact slightly more. If you are going to allow him to stand at Fullerton Square and campaign. I am not in favour of that. Maybe I am a little conservative on this. What I would like is to have the President's election done in a fashion that does not bring party politics into play. But, of course, we have got enough constraints in the law which, if implemented, will definitely help in the process. But I would like something more added to these procedures, in the case of Presidential election.

8. You would not object to a party campaigning for a particular individual to be elected as President? - (*Mr Shrinivas Rai*) I think, Sir, I would not want a political party, be it the ruling party or the Opposition party to campaign. They could give him the support. The Prime Minister can go before the nation and say, "Look. I am backing him up." Otherwise the process becomes involved in party politics. So I am saying, whether it is the ruling party or Opposition party, let the man stand on his own. He should not have the campaign by the Prime Minister or the Cabinet. If he cannot stand on his own, I do not think we ought to have him considered. He should be in a position to stand on his own and defend his performance before the nation.

Mr Goh Chok Tong] All right.

Prof. Jayakumar

9. Mr Shrinivas Rai, can I just follow up on the question which the First Deputy Prime Minister asked you? Some representors have argued for specific provisions to be written into the constitutional provisions prohibiting the Elected President, at the time of standing for elections, to be a member of a political party, that is, he must sever all his ties. From your response to the First Deputy Prime Minister's questions, do I understand it that, while you are in favour of a non-partisan President, you would not go to the extent of requiring these provisions to be spelt out in the Constitution? Would you rather leave it to custom and practice to evolve? Am I right in understanding you? - (*Mr Shrinivas Rai*) I entirely agree with your suggestion. I would leave it to constitutional convention. And even if you legislate, Sir, you cannot legislate against people's sympathy. If I may give an example. If I have been a member of X Party, you can have a legislation, I resign. But if you have a constitutional convention whereby the moment he is going to stand as a candidate, he resigns, he cuts off his political ties, I think that will be sufficient. I will be quite happy. I do not think I want it to be entrenched in the Constitution as a constitutional provision. But at the same time, I want a constitutional convention to grow and I believe the political parties in Singapore are mature enough to have this thing for the national good, to have this as a part of the constitutional process.

10. Can I turn to another issue? This concerns your comments on the list of persons who should be eligible to stand

for candidacy as a President. You have commented that the list is rather narrow and you would like to see it enlarged. Can you elaborate? - (*Mr Shrinivas Rai*) Sir, there is this provision where the Committee could decide, and very wide power is given to the Committee. Since there is a deeming clause also in this Bill, I would like to have the deeming clause extended to people like Ambassadors. Let us say, we have a capable man who is, I think, as equal as any of the hon. MPs, in some cases better than hon. MPs, and yet he has to go before the Committee and satisfy that, "Look. I wish to stand for election. Please certify me. I am good for the job.". I would rather have them included. Similarly, the University's Vice-Chancellors. They are people of great learning and respectability and understanding. I think they too ought to be included. I am not asking it to be liberalized but I think it would be in the interest of the nation if we have a clause which extends to the people whom I have suggested in my paper.

11. I might indicate that other representors have in a similar vein suggested other categories of persons could be included in the eligibility criteria. We would consider your comments together with the others. But there is another related issue which we would have to consider and which has also been the subject matter of some of the representations, and that is, should or should we not retain the approach in the Bill whereby there is a Presidential Elections Committee to sieve, as it were, the number of candidates put forward? Some have argued that there ought not to be any pre-qualifications. May I have your views on

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this? — (*Mr Shrinivas Rai*) Sir, I beg to disagree. I think we have to have some criteria, some qualifications. And by having these criteria laid down, I think the Committee in its mind would also fall back on the deeming clause. And this is not an election for Members of Parliament - anybody who qualifies, goes in. I think you are going to give the President some extra powers, some vested powers, and I would rather have certain guidelines and certain stringent guidelines, but at the same time I would rather be ample in my definition. I would include people whom I have suggested, like Vice-Chancellors and Ambassadors. But I would still want certain minimum qualifications, Sir.

12. So you are in support of the concept of pre-qualifications but you would like to see the categories broadened? - (*Mr Shrinivas Rai*) The categories should be broadened, Sir.

13. I have one final question. We have a submission from the Law Society who had made some very useful suggestions. One of their comments was that the decision of the Presidential Elections Committee on who should be qualified or disqualified in the final list should be subject to judicial review. Since you are a lawyer, we will be interested in your views on that? - (*Mr Shrinivas Rai*) Sir, in fact, I have already mentioned in my submission that it is not a matter for litigation.

14. Why? - (*Mr Shrinivas Rai*) The reason is this. This Committee is like the Public Service Commission or, for that matter, any other Commission. The moment you allow this Pandora's box to be opened, then you will find there are

lots of things the Committee would have to justify its decisions and sometimes it will harm the candidate if the reasons were to be given. In the interests of the candidate himself and the country, I think let us, not have a litigation on that. The Committee, as I have suggested, must be made of men of integrity. In fact, they should be themselves potential Presidential Council candidates. If you have this Committee powered by highly qualified people, I do not think that any candidate likes to suffer from the choice. So let us not bring judicial review into this matter. Give the Committee the certifying power but with a little bit of liberalisation of the definitions. I think more people would qualify. After all, let us be realistic, Sir, there are not many candidates who can qualify for this high office in Singapore.

Prof. Jayakumar] Mr Chairman, those are the questions I have.

BG Lee Hsien Loong

15. Mr Rai, can I just ask you one question? You have expressed in your submission the view that you are not in favour of having a referendum on this proposal. Could you summarise your reasons for this conclusion? - (*Mr Shrinivas Rai*) Sir, first of all, on Constitutional ground, as I have pointed out in my paper, there is no necessity for us to go through a national referendum. There are only limited cases for referendum in Singapore. I have also pointed out countries, like India, where they have taken very major decisions. I, in fact, had discussion with one of the law lecturers, Prof. Penna, who is from India, and he told me that there has not been a single

Mr Shriniwas Rai (cont.)

referendum in India for 45 years or so. They have many very major decisions taken by the government. Bank nationalisation is one example, and the privy purse. Here in Singapore, I would not be in favour for two reasons. First, there is no Constitutional necessity. Why should we burden ourselves? Secondly, this issue was debated for a long time, in the press, in Parliament and at the hustings during the last election. It became an election issue. Why should we have the whole process re-enacted, just to satisfy some people? As I have pointed out, I do not know whether the people who talk about referendum understand the concept of referendum and the constitutional necessity of it. So I plead to this Committee that, especially when something good and positive is being done, I do not think the people are going to object to it. A further ground, Sir, is that there has not been any adverse comment in the newspapers. I read only the *Straits Times* and the English papers, and judging from the newspapers, the media coverage, people would have voiced it if there was a strong case against the proposed amendments to the constitution. On this score, I do not think we should burden ourselves with a referendum.

BG Lee Hsien Loong (cont.)

16. You have proposed in your paper a minimum age limit for the President. What is your rationale for this? - (*Mr Shriniwas Rai*) Sir, if you will bear with me, the Presidential Council has got 35 years' age limit. Let me paint a scenario which I hope may not be applicable. You have a business executive, young, dyna-

mic, Harvard-trained, very flamboyant, who appeals to the younger crowd. At 25 years of age, he goes before the electorate. As the Bill stands now, he is qualified. He would qualify under the deeming clause. He does not have to go before the Presidential Elections Committee and nobody can stop him from standing as a candidate. Would you like to have a 25-year old man as a President and the Prime Minister of 60 years bowing down to him every day, and seeking his advice? This is the worst scenario but if the law is to stand, it is possible for this to happen. That is why I have said, to quote a Hindi saying, that age has its own education. Let us have some limitations. I am not suggesting 35 years but whatever age limit this Committee feels proper.

17. What would you suggest? - (*Mr Shriniwas Rai*) Minimum 35 years old.

18. At least? - (*Mr Shriniwas Rai*) At least. I would be happier with 45. Let us look at the High Court judges. They have to be in practice for ten years before they can become High Court judges. No judges, I know of, have been on the Bench earlier than 35 years, in fact, at least 40 years. The Elected President is holding a higher office than any of the High Court judges. Why should we have a provision which is applicable to Members of Parliament? There ought to be an age limit and I would urge this Committee to give a minimum age of 35 years, if not more, Sir.

19. Some representors have also asked for a maximum age for compulsory retirement. Are you in favour of that? - (*Mr Shriniwas Rai*) Sir, if the President is healthy and we know a case of Lord

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Denning who, in 90s, is still writing, and Prof Jayakumar will bear me out, that he writes very well and his reasoning is still sound. Some people at 60 or 55 have gone senile mentally. Some people at 70 or 80 are still sound. Why should we burden ourselves with age? The man himself, if he is a responsible citizen, will know when the time has come for him to go.

BG Lee Hsien Loong] Thank you.

Chairman

20. Thank you, Mr Shriniwas Rai. We will be sending you a transcript of today's proceedings for your verification. Can you run through it and send it back to us? - (*Mr Shriniwas Rai*) I will do that, Sir.

(The witness withdrew.)

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Paper No. 10 - Mr Kenneth Chew of 22 Jalan Kelawar, Singapore 1024, was examined.

Chairman

21. Good morning, please be seated. Could you state your name and occupation for the record? — (*Mr Kenneth Chew*) My name is Kenneth Chew. I am a Chartered Accountant by profession.

22. Thank you for your submission and presence this morning? - (*Mr Kenneth Chew*) Very kind of you to invite me, Sir.

Prof. Jayakumar

23. Mr Chew, you have given some very interesting and useful comments. It will not be possible for us to deal with all of your comments this morning, but the Committee will definitely consider the various points. This morning, given the limited time, we can touch on some of your points. As for myself, I wonder if you could read out the second paragraph under "Introduction", please? — (*Mr Kenneth Chew*):

"As such it is imperative that the Elected President has all the necessary qualities such as stature to command respect from all citizens besides his other technical skills and statesmanship, etc."

24. You obviously attach considerable importance to the stature, the qualifications of whoever becomes the Elected President? — (*Mr Kenneth Chew*) Yes, Sir, most certainly.

25. The question that I would like to ask you is to elaborate on how you would recommend that we improve the Bill to ensure that we do indeed get a person with the qualities that you have commended for an Elected President. How can we improve the Bill further to ensure

that we attain your objective? - (*Mr Kenneth Chew*) To begin with, Sir, a person must have reached a certain age of maturity, because there is nothing like experience. For example, if you have a former Minister who looks after the Ministry of Trade or the Ministry of Finance and he has been there for a few years, he knows the problems, he puts across his views with his own colleagues, debates them in Parliament, and things like that. Therefore, he has the experience to back him up, and it need not be just one or two years of experience but a reasonable period of experience. Because the Bill which you have introduced is a most important Bill as it goes beyond what we have ever thought about before. You are giving him a lot of Executive powers. To some extent, it is like the President of the United States. Although the President of the United States is more active, rather than passive, as compared to this Bill, the President has got no right to initiate anything. He only has the right of veto. Therefore, there is the question of experience and technical ability because he needs some technical ability, to begin with, as he is the President of the whole country. Everything comes to him eventually. He may need to know a little bit about politics, foreign exchanges, trade and industry, foreign affairs, social welfare, and maybe some knowledge of psychology. The one most suitable, as I can see it, is our Prime Minister Lee. It suits him very, very well. There are very few people who have his kind of experience and capabilities. Talking about stature, he is a well-respected person. Even the Opposition Member, Dr Lee Siew-

Choh, admitted it when he came back from China. When I was studying in Australia, everybody was saying "Prime Minister Lee is coming. Better come and have a look and listen to what he has got to say.". Everywhere he goes, he handles questions from the press in Hong Kong, in Washington and elsewhere with finesse and refinement. There are very few of his peers, I would say.

26. We note your comments but, unfortunately, this Select Committee here is not the Presidential Elections Committee. Perhaps, you can make your views known later but if I can take you a bit further on my question. Since you obviously attach importance to candidates standing for the Elected President to have the kind of stature, the personality and attributes, would you agree with the approach in the Bill, although the details may be open to further discussions, that there should be someone who scrutinises and sifts the candidate, precisely for the purpose of determining if they have the kind of qualities that you advocate? Because some representors have written to us urging that we do away with the approach of pre-qualification. In other words, anyone should be able to stand for the post of Elected President, whether or not he has any qualifications other than the minimum qualifications required for a Member of Parliament? - (*Mr Kenneth Chew*) I cannot agree on that, Sir, because here we are talking about the reserves of the country. If you have an Elected President, who abuses that power, or is not able to make a very considered judgement, Singapore may not be able to recover in this very competitive world we live in. If we have a 100

billion dollars worth of reserves and 20-30 billion dollars go down the drain or 50 billion dollars go down the drain, it will take us a long, long time to recover. We may not even recover, because the world is such that survival of the fittest must come into the picture. Therefore. I put emphasis on stature because it must be accepted by all parties. That means the person must have a stature so that whatever he says is accepted by the Opposition, the laymen, or the man-in-the-street and whatever he says is good for the interest of the country and not because he comes from this party or that party. People may say he is biased, because he is looking after the interests of his party. That is why I put the word "stature" there.

Prof. Jayakumar] Thank you. I think my colleagues may have some questions.

BG Lee Hsien Loong

27. Mr Chew, can I ask you on one of your proposals? This is on Article 65 and it is in paragraph 9 of your representation. Could you read it out, please? - (*Mr Kenneth Chew*):

I would like to propose additional powers be given to the President:

- a) Authority to over-ride the Prime Minister and insists on holding of election where in his opinion any deferment is unjustified.
- b) Not to approve the re-drawing of election boundaries where it leads to unfair selection — jerrymandering.
- c) To sack the Prime Minister and dissolve Parliament and call for fresh election if the Prime Minister refuses to do so when his terms of office expires or under conditions which warrants it.

28. Can you explain your rationale for giving the President these additional

BG Lee Hsien Loong (cont.)

powers? — (*Mr Kenneth Chew*) The rationale is this. From my experience, I will give you a good example. I would not mention the countries. Around us, if you have a President or a Prime Minister, where Parliament is supreme and where he has two-thirds majority, he has a lot of powers. Therefore, if he wants to stay in power, he can do away with elections if his term of office expires. Or he can declare a state of emergency. We have noticed this in the past in other countries around us before. The other point which I want to make is that even in Australia some years back, Sir John Kerr sacked the Prime Minister of Australia, because he was putting through a Supply Bill which was going to spend a lot of money of the country and to do a lot of borrowing. Mr Fraser came into power as a caretaker Prime Minister. The other thing is the question of redrawing of election boundaries. Here again, if you know where your votes are coming from, you can redraw the boundaries to suit yourself. But it may come to a stage where it may alienate the whole population. Therefore, you may have other problems arising out of it. And the President must be given some degree of power to determine in situations like this.

29. So you would be in favour of giving the Elected President this very considerable power, so that in a dispute with the elected government, with the Prime Minister, the President can dismiss the Prime Minister, insist on fresh elections being called, in order that the people give a fresh mandate to the Executive before drastic action is taken.

Is that your consideration? - (*Mr Kenneth Chew*) Yes, Sir.

30. Right now, the provisions for the length of Parliament being five years and the need to call general elections after that are in Articles 65 and 66 of the Constitution. We do not have to go into the detailed provisions, but they are there. They are not specially protected provisions. In other words, any government which comes in with a two-thirds majority in the House can change the Constitution and shift from a 5-year term to a 6-year term, or suspend elections, or completely alter the system. Would you favour entrenching these two provisions to require Presidential approval before they can be amended, the same way that the President's powers are going to be entrenched in the Constitution? - (*Mr Kenneth Chew*) I think I am not in a position to comment on that because those are technical areas regarding the clauses. I am just saying that there is a problem here. How you are going to do it in Parliament, you are in a better position than I am.

31. I agree with you that there is a problem. And I am pointing out that one way in which a government can circumvent this requirement for holding elections is just to change the Constitution? — (*Mr Kenneth Chew*) That is right.

32. I am suggesting therefore that one way to prevent a government from doing this is to require Presidential approval for amending this part of the Constitution and, if the President requires it, to go for a referendum before the Constitution is changed. I think that would help to resolve part of the pro-

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blem? — (*Mr Kenneth Chew*) Yes, I would agree, Sir.

Mr Chiam See Tong

33. Mr Chew, do you agree that the President should be above politics? - (*Mr Kenneth Chew*) In theory, I would agree with you a hundred per cent that the President should be above politics. But we have to be pragmatic, to begin with. How would you determine the suitability of a candidate for the post of President if he is not being exposed to the nation? How is he going to be exposed to the nation if he is not in politics or if he does not hold a high position in the government or outside the government or maybe a Member of the Opposition where the people can assess his capabilities, his statesmanship, his technical skills and his other skills? It would be practically impossible. I would agree with you a hundred per cent that if the President is above politics it is so much the better, and if he has all these qualities, why not. But can you find one?

34. Would you put this requirement in the Bill that he resigns from all his political connections once he is elected to the Presidency? - (*Mr Kenneth Chew*) I think that might be a good idea. In that case, as we all know, justice is not only being done but it may be seen to be done as well that he is the President and that everybody should take note that whatever he says is not in the interest of certain sections of the citizens, but in the interest of the whole nation. That I can accept.

35. You said that the President should be restricted to two terms. Can you comment on that? - (*Mr Kenneth*

Chew) The reason why I have suggested that the President should be restricted to two terms is this. I have also put a prerequisite, that the President should start with a certain minimum age, which I have put as 50 years. Because two terms of six years gives you 12 years. That means if he is 50 years old, he will become 62 years old after two terms. I think it is to provide a line of succession. You need somebody to come in maybe from the Presidential Council of Advisors who would have the experience. Like our First Deputy Prime Minister, he has been in the Government for many years and sitting next to our Prime Minister, learning the ropes right from the beginning. I think if you have such a succession, it would be very smooth. If you have somebody suddenly becoming President, a lot of investors overseas may not have the confidence. If you have a sudden change of government, people may not have the confidence in the continuity of policies which have been good in the country in the past. Or if the policies have been bad in the past and may need to be changed, that has yet to be debated. But definitely I would like to restrict it to two terms to give other people a chance, the younger generation to come up. Or if there is nothing for them to hope to become President, why become candidates, to begin with.

36. Other than the question of succession, do you have other considerations to limit the President to two terms? Do you consider that he might wield power if he sits in this office for too long? - (*Mr Kenneth Chew*) Two terms is not too long a period of time. Sir. If it is like Parliament where the Prime Minister can be there for the rest of his life, like some

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Mr Kenneth Chew (cont.)

people who have clung to power continuously, then it may come to a stage where he may become senile. Everybody gets old and as you get older and older, generally speaking, you do not have the energy, the sharpness and the quickness of mind. Let us say we have a President who is sitting there and he is 80 years old. How would he look? Would he be able to carry out his duties effectively in the

interest of the nation? That is why I put a two-term period there, Sir.

Chairman

37. If there are no more questions, thank you very much, Mr Chew, for coming here this morning. We will be sending you a transcript of the proceedings. Could you run through it and return it to us? - (*Mr Kenneth Chew*) Yes. Thank you very much, Sir.

(The witness withdrew.)

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Paper No. 12 - Mr Vincent Tay Shian Poh of 466 Siglap Road, #01-01, Singapore 1545, was examined.

Chairman

38. Good morning. Please be seated. For the record, could you state your name, address and occupation? - (*Mr Vincent Tay Shian Poh*) My name is Vincent Tay. I reside at 466 Siglap Road and I am a second year Law student.

Chairman] Thank you, Mr Tay, for your submission BG Lee.

BG Lee Hsien Loong

39. Mr Tay, can I take you to the section of your submission concerning the qualifications of the President? You are in favour of making the pre-qualifications less stringent so that more people will be eligible to contest for the post of the President? — (*Mr Vincent Tay*) That is right.

40. Can you explain your rationale for this? — (*Mr Vincent Tay*) I feel that, firstly, the criteria provided restrict candidates considerably because they only come from the highest echelons of the civil service. And the list even includes former Ministers which might make the candidates politically biased, I think. So I think that candidates should come clean without any political attachments. And perhaps the criteria could be reduced to that of a Member of Parliament or a member of the Presidential Council for Minority Rights.

41. The criteria which are put in the Bill are not exclusive clauses. In other words, if you have been a Minister or the CEO of a big company or a Permanent

Secretary, then you are deemed to be qualified to stand as a candidate. But it does not preclude the Presidential Elections Committee from accepting other candidates as being qualified even though they do not have these qualifications, this particular background. With that in view, would you still be in favour of widening the list? — (*Mr Vincent Tay*) I would, Minister, because I believe that when the Presidential Elections Committee reads the list of criteria, they would be subject to the rule of *ejusdem generis*, meaning that if they choose another person outside of the list of criteria, they would choose another person of the same kind and so still restrict the candidates.

42. So you would prefer a wider scope? - (*Mr Vincent Tay*) Yes, I would.

43. Would you be in favour of removing the list altogether and saying every adult citizen aged 35 and above can be eligible to stand for election as President? — (*Mr Vincent Tay*) I suppose the list should be made as basic as possible, as basic as the qualifications for a Member of Parliament.

44. Which only means a person of sound mind and not bankrupt? - (*Mr Vincent Tay*) That is right.

45. Is that adequate? - (*Mr Vincent Tay*) I suppose so because I think a basic list like this does not preclude high ranking members of the civil service to come forward as candidates. I think Singaporeans are now more highly educated and they are more able to make right decisions in respect of candidates.

BG Lee Hsien Loong (cont.)

46. Would you be prepared to consider another possibility, which is to have a basic list of pre-requisites, but to allow the Presidential Elections Committee considerable latitude in deciding who is fit to be a candidate? In other words, although the Constitution does not say so, when you go before the Presidential Elections Committee they will rank all the people in order of suitability and then the four or five whom they deem most qualified can be put before the electorate to be voted upon? - (*Mr Vincent Tay*) Yes, that would be better than the strict criteria.

47. So you would still be in favour of a pre-selection by the Presidential Elections Committee? - (*Mr Vincent Tay*) If it comes to that. But preferably, if the Committee sees fit, they should lower the criteria for candidature.

48. Should the Committee put before the electorate a person whom the Committee thinks is unfit? - (*Mr Vincent Tay*) Can you please define "not fit"?

49. For example, somebody with totally no background in administration or in running companies, but he says, "I'm 35 years old. I am not bankrupt. I want to be President."? - (*Mr Vincent Tay*) Yes. I suppose the Presidential Elections Committee should allow the populace to decide. And if such a person were to run alongside candidates with high qualifications, I doubt that -

50. You are confident that he will lose? - (*Mr Vincent Tay*) Yes.

51. You hope he will lose? - (*Mr Vincent Tay*) No. I am confident that the populace will choose the right person.

52. Can I take you to another part of your submission? You talk about the ISA detentions and the President's power to review these detentions. Can you summarise for the Committee your position on this? Are you in favour of giving the President this power or not? - (*Mr Vincent Tay*) I am in favour of the power that the Bill envisages for the Elected President, but I feel that perhaps more power should be given to him in that he should be allowed to decide whether or not a person should be detained. This is because I feel that at present, with the amendments to the ISA in 1989, the subjective view is too wide. The First Deputy Prime Minister did say that this is not a matter for the courts to decide, but it is for a political body to decide whether or not a person should be detained. In view of the fact that the Elected President is supposed to be a checking power, why not place this subjective test under his purview.

53. His sole prerogative to decide? - (*Mr Vincent Tay*) No. The Minister decides, but the President is allowed to review that decision.

54. So the Minister must get the President's agreement? - (*Mr Vincent Tay*) Yes.

55. Can I be clear with what you mean? Does it mean that the Minister says, "No, I do not want to arrest him." But the President can still arrest the person? Or do you mean that only when the Minister wants to arrest, can the President say no? - (*Mr Vincent Tay*) The President does not have any executive power as such. He blocks the decision to arrest.

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56. So that is already provided for in the Bill now. The President can block the decision to arrest if it is taken against the advice of the Advisory Committee? - (Mr Vincent Tay) I am sorry. I thought the Bill merely states that a person cannot be further detained. Does this also include the arrest?

57. No, it includes the first detention order? - (Mr Vincent Tay) I see.

58. So you are comfortable with what is in the Bill? - (Mr Vincent Tay) Yes, that is right.

59. On the CPIB, which is another additional discretionary power of the President, you have suggested widening the President's authority. Can you explain that? - (Mr Vincent Tay) I feel that the current provisions merely provide for the President's concurrence to override the Prime Minister's refusal to allow investigations into a Minister's action. But why not widen it to include members of the public and the Prime Minister himself?

60. How will that work? Can you explain the change which you want? - (Mr Vincent Tay) I merely feel that the Elected President's purview should extend to cover investigations into maybe perhaps the Prime Minister which the Prime Minister himself does not want.

61. Yes, of course. I think that would be necessary. Should we also allow the President to authorise investigations of other members of the public? Because some people have made the argument that a crooked Minister cannot be crooked all by himself. He must be crooked in cooperation with somebody else, most likely a businessman or some-

body in the private sector. So in order to investigate the Minister properly, you really have to investigate his partner, his friend. But if the Prime Minister can block the investigation of his friend, he can successfully protect the Minister? - (Mr Vincent Tay) That is right.

62. So you would be in favour of allowing the President to authorise investigations of the friend? - (Mr Vincent Tay) Yes, that is right.

63. Can I come to another subject - succession? You have argued against the Speaker and the Chief Justice succeeding the Elected President. Can you explain why? - (Mr Vincent Tay) I feel that the Elected President is an elected person and he receives the mandate of the people through the elections. To allow the Speaker or the Chief Justice to take over, even for a temporary period, would negate this mandate. So I propose to have a Vice-President run alongside the Elected President. Secondly, I feel the choice of Chief Justice is a wrong one because if re-elections are to take place within a minimum of six months and in that period of six months, an ISA case may perhaps come before the Chief Justice acting as Elected President. This would, I suppose, reintroduce the judicial review through the backdoor.

64. So your objection would be more to the Chief Justice than to the Speaker acting as President? - (Mr Vincent Tay) Yes.

65. What would be your objection to the Speaker acting as President? - (Mr Vincent Tay) I have no objections as such, except that I feel that the Speaker does not have the mandate of the people.

Mr Vincent Tay (cont.)

It will be better for a Vice-President to be elected as a team, as envisaged in the 1988 White Paper.

BG Lee Hsien Loong (cont.)

66. The problem with that is that you will have to tie up a very highly qualified and capable person to be Vice-President, whose sole job is to wait for the President to become unavailable so that he has something to do. In some countries, the job of the Vice-President is to attend funerals and ceremonies. That was the reason why, in the White Paper and in the Bill, we were reluctant to create a Vice-President's post. But this concern that whoever acts for the President should also have some mandate and not just be a nominated official, I think, is a valid one. We will have to find some ways to accommodate it? - (*Mr Vincent Tay*) Perhaps the Vice-President might be allowed to sit as a member of the Council of Presidential Advisors (CPA) working more as a stand-by President rather than as a team as such.

67. Would it be necessary for the person who acts as President to have

been elected? Or would it be sufficient for him to have been delegated by the Elected President? For example, I am elected as President. He is my representative to look after matters in my absence and he has actually got my confidence. Does he have to be voted, whether separately or together? - (*Mr Vincent Tay*) I suppose an appointed person can be allowed to take a temporary position as Elected President. But I feel that it is not good to allow him to continue for a six-month stint.

68. Perhaps we should reduce the period from six months to three months. Would that make things better? - (*Mr Vincent Tay*) Yes, that would.

BG Lee Hsien Loong] Thank you.

Chairman

69. Are there any other questions? If not, thank you, Mr Tay, for coming here this morning. We will be sending you a transcript of the proceedings for you to verify. Thank you very much? - (*Mr Vincent Tay*) Thank you.

(The witness withdrew.)

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Paper 21 - The following representatives from the National University of Singapore Law Club, c/o Faculty of Law, National University of Singapore, 10 Kent Ridge Crescent, Singapore 0511, were examined:

Mr Khaleel Namazie, Secretary

Mr Sean Ng, Member

Mr Bernard Tan, Member

Mr Anil Kumar Samtani, Member

Chairman

70. Can you state your names and the offices that you hold for the record? - (*Mr Khaleel Namazie*) My name is Khaleel Namazie. I am the Secretary of the Law Club. (*Mr Bernard Tan*) My name is Bernard Tan. I am a member of the Law Club. (*Mr Sean Ng*) My name is Sean Ng. I am also a member of the Law Club. (*Mr Anil Kumar Samtani*) My name is Samtani Anil Kumar. I am a member of the Law Club.

Chairman] Thank you very much for your written submission.

Mr Abdullah Tarmugi

71. Mr Ng, or whoever, in your paper, you suggested that the powers and functions of the Elected President should be specified and made incapable of amendments. Would you elaborate on that requirement of yours? - (*Mr Sean Ng*) By "amendment", we actually mean that it should not be amended by a normal Act or a constitutional amendment if the amendment intends to cut down the powers of the President. If the Bill is passed, the Elected President should not sign away his powers if he is amenable to it. That means the present President should not be allowed to sign

away his powers such as to hinder another President coming in after the next election. Any amendment that tries to amend the powers of the President by cutting it down should go for a national referendum regardless of the present President's intentions.

72. Coming to the Council of Presidential Advisors (CPA) now, you suggested more stringent criteria to be set for the membership of the CPA, particularly with regard to financial expertise? - (*Mr Sean Ng*) Yes. We feel that the main purpose of having the CPA is to advise the President on the financial provisions in the Act which he has to refer to. (*Mr Bernard Tan*) Because it is not provided in the Bill what the composition of the CPA should be like. So bearing in mind that much emphasis is put on the financial provisions, we feel that at least some guidelines as to the composition of the CPA, with emphasis on people with financial expertise, should be included. Because the finance of Singapore is very important. So we feel that the President should be well advised by people who have the expertise.

73. You also suggested that members of the CPA should be appointed for life. Why is that so? - (*Mr Samtani*) We feel that giving the members of the CPA

Mr Samtani (cont.)

security of tenure for life would ensure that they would be completely impartial and that they would not act according perhaps to the views and wishes of the people who appointed them in the first place. This will ensure impartiality of the CPA.

Mr Abdullah Tarmugi (cont.)

74. Would there not be any entrenchment of views or interests if you appoint them for life? - (*Mr Samtani*) I am sorry I do not understand that question.

75. Would not there be some entrenchment of interests or views if you appoint the CPA for life? Virtually, they have the whole run of things throughout their tenure of office? - (*Mr Samtani*) I mean by giving them tenure of office for life would ensure that they would act impartially. That is why we are proposing that they be given tenure of office for life.

76. In other words, knowing the fact that they are guaranteed to be there for life, you make that as an assurance for them to be impartial. That is your argument? - (*Mr Samtani*) That is right.

Mr Goh Chok Tong

77. The Council of Presidential Advisors will be appointed by the President, the Chairman of PSC and the Prime Minister. They will appoint two members each. If they are appointed for life, it means that the first appointment in fact ties down future Prime Ministers, future Presidents and future Chairmen, PSC. Your point is already met because there

is a fixed tenure of office, whether it is for life or for three years. Once an advisor is appointed, he is there for three years. He is at liberty to impose his own judgment on matters because he is there for three years and he cannot be removed? - (*Mr Khaleel Namazie*) We consider that it would be better if they have tenure of office for life. It is precisely because of the fact that two members each are appointed by the President, Prime Minister and Chairman of the PSC. If they were not given a term of office at least longer than three years or some specified period, then it would be open to the various persons, ie, the President, Prime Minister and Chairman of PSC, either to appoint or revoke their appointments, depending on how they have decided on particular matters in the previous three years. Hence, we thought that the most equitable way to do it would be to have them there for life.

78. *Mr Goh Chok Tong*] Yes, but that would tie down future governments. Because if you appoint a fairly young person for life, he would be there for the next 20 years and there is no room for you to make a change, in case you want to have a more current advisor to tackle future situations. But your point that the man must be able to exercise his own judgement, because of some security of tenure of office, is noted. And I think that is provided for if he is appointed for three years and within that he can still give advice objectively.

Mr Chiam See Tong

79. Do you think there is a need for a national referendum on the Bill? - (*Mr Khaleel Namazie*) We think that under

the current system of government, as it were, it is Parliament that is passing this particular Bill and provided it is passed by two-thirds majority of Members of Parliament, and considering the fact that Parliament is the body from which all laws, as it were, flow in Singapore, then there is no necessity, we feel, to have a national referendum on this particular Bill.

80. I do realise that there is no constitutional requirement to have a referendum. But this Bill has major fundamental changes to our political system. And in that light, do you think there is still a need for a national referendum on it? - (*Mr Samtani*) We do feel that it is good if there is a referendum so as to ensure that the public support the Bill. However, as Mr Khaleel has mentioned, there is no constitutional requirement. But we do feel that it would be good if there is a national referendum on the Bill.

81. Do you feel that under this Bill, too much power is given to one person? - (*Mr Bernard Tan*) No. We do not really think so because the power is merely a blocking power. The intention of this Bill is to give him only custodial powers. And, in fact, in our submission we try to clarify some provisions so that it limits its powers to purely custodial ones. If this Bill can limit its powers to purely custodial ones in only blocking powers and financial provisions, appointments, and so forth, then I think in principle it is all right.

82. But in its present form, it is true that the Elected President has no initiative powers. But in practical terms, when the Elected President comes into

being, do you not think that the Prime Minister will have to consult, and in fact get the consent of the Elected President in appointing people to important Civil Service posts? In practice, he is in fact sharing power with the Prime Minister. Do you agree to that? - (*Mr Khaleel Namazie*) In practice, I suppose yes. In a sense, yes, we do agree. Although the Government may put forward a particular nominee, it is in essence the President who says yes or no to a particular appointment. And we have dealt with it to some degree. But, in a sense, yes, it is true.

83. Do you agree that the President should have no political affiliations? - (*Mr Bernard Tan*) Yes, we do agree with that. (*Mr Khaleel Namazie*) We think, however, although it will be, as we have said already, a good ideal to aspire to, it is unfortunately not (I would not say possible), but it is difficult to attain in any country, not only in Singapore which is such a small country. But it is a good ideal to aspire to. Unfortunately, I do not think -

84. But what is the view of your Committee? You said that the ideal is not to have any political affiliations? - (*Witnesses*) Yes.

85. Thank you. You said also that the term of the President should be limited to five years. Could you elaborate on that, please? I think it is under Part II of your representation? - (*Mr Khaleel Namazie*) The President's term is six years.

Chairman] Mr Chiam, you could assist by giving the page and paragraph of the relevant passage you are referring to.

Mr Chiam See Tong

86. Yes. Do you recommend that the term of the Presidency should be limited to five years? - (*Mr Khaleel Namazie*) No. Six years, according to the provisions in the Bill.

87. No. Your Committee's view. Do you recommend that it be limited to five years? — (*Mr Sean Ng*) No, we do not. (*Mr Bernard Tan*) We have no quarrel that it should be six years.

Mr Chiam See Tong] Why do you say that at the bottom of the page?

Chairman] Mr Chiam, could you refer to the page so that we can follow your argument?

Mr Chiam See Tong] Yes. All right. I will leave that out.

Chairman] All right. Would you like to move on?

Mr Chiam See Tong

88. Yes, I would like to move on. Do you feel that the term of the President should be limited, say, to a certain number of years? - (*Mr Khaleel Namazie*) Yes, of course.

89. You agree with two terms? - (*Mr Khaleel Namazie*) We are not quite sure of the actual number of years, but of course it should be limited.

90. You did mention that if the Prime Minister and the Elected President come from different political parties, there would be serious problems. Can you comment on that? - (*Mr Khaleel Namazie*) Yes. Actually what we mean is this. I have already said that it is difficult to aspire to the ideal to have a President

who is completely averse to any sort of political ideas or does not have any idea of what politics is all about. That is not possible. The most we can do, in a particular case like this, is to have the President, once he becomes President, give up his affiliation to any political party. That is the most we can aspire to. That is the reason why we have suggested this. Because if you have a President from one political party, and the Government, for instance, from another political party, then you might have problems. But we hope to a certain extent that this problem has been solved by having a requirement as, I think, in the Swiss system where once a person becomes President, he has to give up his party membership. That is what we meant.

Prof. Jayakumar

91. Before I ask my questions, as a former teacher in the Law Faculty, I want to congratulate your Club for having taken upon yourselves the trouble to study the Bill and put forward a representation. We may or may not accept all of your points, but the fact that you have made a representation shows that you have taken a keen interest in this Bill. I think it speaks well for law students. If I may ask, first, a general point. Towards the end, in your last page, you say that the concept behind the Bill appears to be a good one. My first question is this. You know that the concept has evolved over a series of years from the first White Paper and the second White Paper. Originally, the concept was limited to blocking powers of the Elected President on key appointments and on spending of reserves. The way it has evolved and now reflected in the Bill is that, apart from

those two originally envisaged areas, the Elected President would now also have three additional safeguard roles in the areas of maintenance of religious harmony, Internal Security Act and investigations under the Prevention of Corruption Act. Are you in favour of these three additional roles or are you in favour of confining the Elected President's concept to the narrower original concept? - (*Mr Samtani*) We have no quarrel with the additional functions of the President, as laid down recently, but we have certain -

92. I understand. You have some refinements to offer? - (*Mr Samtani*) That is right.

93. We have taken note of that. But you are in favour of this enlarged safeguard role? - (*Mr Samtani*) That is right. We are in favour of the extensions.

94. Why? - (*Mr Samtani*) We feel that, especially perhaps with regard to the ISA and the Maintenance of Religious Harmony Act, the President would act as an additional safeguard, as an additional check on the Executive. So we feel that it is good to extend the President's power to these areas.

95. My second question is a follow-up of responses you gave to Mr Chiam. Mr Chiam asked you whether you thought this would give too much power to a single individual. And if I understood your response, it was that you did not think too much power would be conferred if the power of the Elected President is limited not to power to initiate anything but power to block. Am I right in understanding your response? - (*Mr Samtani*) Yes.

96. Can I ask you just a further question? You have studied the Bill and in your understanding of the Bill, does the Bill go beyond giving just blocking powers to the President? You agree that the Bill is confined to giving only blocking powers to the President? - (*Mr Bernard Tan*) Yes.

97. Thank you. I now want to turn to a different issue which the Select Committee will have to address. We have had divergent views from representors as to the process of determining who ought to be qualified for elections to the Elected President. Can you read out your submission under the heading "Discretion in Selection"? This is on the second page of your representation - the paragraph under the heading "Discretion in Selection"? - (*Mr Samtani*)

"It will no doubt be said that it is undemocratic to have any one body shortlist candidates since it will undoubtedly be said that all those who are eligible for election should be allowed to stand and it is the people and only the people who should make a decision. It would surely be difficult for the electorate to decide dispassionately the merits of each candidate since elections are to some extent swayed by popularity. It is necessary therefore that a group of persons decide upon the merits of each candidate. If the PEC can be truly non-partisan both in reality and in appearance, then there is a good chance that this body will be able to function effectively in this regard."

Would you like me to continue to the next paragraph?

98. No. Can you then read the first paragraph on the next page? - (*Mr Samtani*)

"It is submitted that every person who puts himself forward as a prospective candidate should be subject to the scrutiny of the PEC since service in one or more appointments for a period of three years or more does not necessarily equate to being suited for the Presidency."

Prof. Jayakumar (cont.)

99. Thank you. The question that I want to put to you arises from opposing views which have been put to us by other representors who feel that there should be no sieving process and there should not be any pre-qualification. You are obviously in support of some pre-qualification process. Can you elaborate on what you have stated here and why the Bill should retain this approach? - (*Mr Samtani*) We feel that the rationale behind the Bill is to have an additional safeguard, to have someone who is an effective custodian. The very premise of the Bill itself, in our opinion, is that the people may elect a corrupt or a bad government. Similarly, if anyone can stand for elections, the people may be swayed by a candidate's popularity and may elect him on that basis, rather than on the fact that he is qualified as an effective custodian or an effective safeguard against a bad government. So we feel that the rationale and the idea behind the Bill support that the candidates be scrutinised by the PEC in order that only those qualified will be able to stand for election. (*Mr Bernard Tan*) This is especially so because the candidate himself has to be very conversant with issues of financial provisions, security, and religious harmony. And we feel that the PEC should vet such a person to see whether he can fulfil the job of such a person. This PEC can also function efficiently as an administrative body. If we paint a worst case scenario in which 30 people are nominated to be elected as President, it will be quite illogical to have 30 people standing for election because it will be very difficult for the electorate to vote for one person. And also if we go by

the "first past the post" system and one of the 30 people gets voted in just because he has, let us say, 20% of the votes, it will not reflect the true majority of the electorate. So we feel that there should be the PEC to vet these people to come to a manageable number of, say, two or three candidates, to be finally chosen for election by the people.

100. Thank you. Can I turn to one more point before asking my colleagues to ask questions? You are not in favour of the approach in the Bill on succession or performing the functions of the President in cases of inability or death. You are not in favour of the approach of the Speaker, or the Chief Justice, or either of them. Can you explain why? - (*Mr Khaleel Namazie*) It is quite simply because of the very nature of the post of the President and the job that he is required to do. If he is going to decide on matters as diverse as the Internal Security Act and religious harmony matters, then we were a little concerned that the person who decides on this particular matter should not first be a member of the judiciary since this should be excluded from the ambit of the judiciary. No Chief Justice should make a decision on such a matter which is essentially political. Also, the same applies to the Speaker of Parliament who is usually a member of a political party. And we think that these two gentlemen holding these particular appointments should be excluded for these reasons.

101. This is one of the points which the Select Committee obviously will have to consider. You have attempted to deal with the point which has arisen in the debate as to how do we ensure that a Vice-President, if there is a Vice-Pres-

ident, is not left idle, and your suggestion is that he can be made a member of the Council of Presidential Advisors. I believe that is one of your proposals. But could there not be a possible conflict of interest since the President's veto on the Supply Bill may be overridden by Parliament where his veto is contrary to the advice of the Presidential Council? If we accepted your proposal that the Vice-President serves on the PCA and the PCA has advised on a veto of the Supply Bill, then Parliament is involved in the overriding. Do you not see that there is a possibility of a conflict? — (*Mr Khaleel Namazie*) Yes, we do see. It was just a suggestion. We were having problems finding what the Vice-President would do, so we came up with that suggestion. We think that after all has been said and done, it would be a good idea to have a Vice-President. We are thankfully not in a position of having to decide what the Vice-President has to do. But we think it would be a good idea.

102. Can I ask you a further question? I understand that you are not in

favour of the approach of the Chief Justice, or the Speaker, and therefore you would prefer the concept of a Vice-President. Is it crucial to your proposal that such a Vice-President must also be elected in the same election, or would you be quite happy if, for example, the Elected President, or somebody else, were to nominate a person to be Vice-President? In other words, is your proposal for a Vice-President based also on the condition that such a Vice-President must be elected? — (*Mr Samtani*) Yes, it is. We feel that if the Vice-President is elected, only then will he have the mandate of the people. It will be desirable to let the Vice-President as well as the President be elected by the people.

Prof. Jayakumar] I understand.

Chairman

103. Any more questions? If not, gentlemen, thank you for coming this morning. We will be sending you a transcript of the proceedings for your verification? — (*Witnesses*) Thank you.

(The witnesses withdrew.)

MINUTES OF EVIDENCE

45

14 NOVEMBER 1990

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Paper No. 31 - The following representatives of the Law Society of Singapore, 1 Colombo Court, #08-29/30, Singapore 0617, were examined:

Mr C.R. Rajah, President

Mr Warren Khoo, Vice President

Mr Michael Hwang, Chairman, Legislation & Special Assignments Committee (Civil)

Chairman

104. Please be seated. Could you state your names and the offices you hold, for the record? - (*Mr C. R. Rajah*) Mr Chairman, I am C.R. Rajah and I am the President of the Law Society of Singapore. On my left is Mr Warren Khoo. He is the Vice President of the Law Society of Singapore. And on my right is Mr Michael Hwang who is the Chairman of our Legislation Sub-Committee.

Chairman] Thank you very much for your submission and for coming here this morning. The Committee has also received your letter of 13th November making certain amendments to your original submission and we shall take note of the amendments. Prof. Jayakumar.

Prof. Jayakumar

105. Gentlemen, I want to thank you for your submission. For the benefit of the press and those watching our proceedings, they might want to know that I had, as Minister for Law, written to you, Mr Rajah, saying that it would be very helpful if you could get experts in your profession to examine the Bill and give us your comments because this is quite an important Bill and quite novel in some of its provisions and we can benefit from

your views. And I am very glad that your Society has taken a lot of effort in giving us a comprehensive examination of the Bill. We thank you. It may not be possible for us this morning to deal with all the points. But I want to assure you that the Select Committee and the draftsman will carefully study all your points even if we do not touch on them this morning. For this morning, I have a few comments to raise. First of all, you have suggested some specific proposals which I think are good proposals and we will have to consider them. For example, on the removal procedure for removing the President, you have emphasised that the Bill should include the grounds on which this procedure can be invoked. That is a good point. Now, Mr Rajah, can you read out paragraph 12 on page 4? - (*Mr Rajah*) Paragraph 12 deals with new Article 21 on the appointment of public officers and we said:

'Consideration may be given to including the following persons in the list: -

the Chairman and members of the Presidential Council for Religious Harmony (who are presumably as important as the Chairman and members of the two Councils already included);

the Chairman and members of any advisory board constituted under Article 151 of the Constitution (otherwise the force of the new Article 151(4) may be lost).'

106. Can you elaborate? — (*Mr Rajah*) Yes, Mr Minister. Among the

additional powers given to the President under this Bill - "additional" means powers which were not envisaged to be given to him under the first White Paper - was that where the Prime Minister or the Minister in charge does not agree with the recommendations of the Presidential Council for Religious Harmony or the ISA Advisory Board, then he requires the consent of the President if he is to override the recommendations of the Board or the Council, as the case may be. If it is therefore important that where there is a conflict and the President should have the final say, then it is possible for the Government to avoid a situation of such conflict if they pack the Presidential Council for Religious Harmony or the ISA Advisory Board with their own people, so to speak. And in order to avoid a possible situation like this from arising, we thought it would be consistent if the President and members of these two bodies also require Presidential assent before they could be appointed. That was the thinking behind this recommendation.

107. In other words, if the Elected President's consent was not needed for the appointments of these two bodies, your concern is that his safeguard role in those areas could be circumvented or undermined? - (*Mr Rajah*) That is precisely the point, yes.

108. I think you have a very good observation there. Speaking for myself, I think we will have to make suitable amendments to the Bill. Can I turn to your comments on the Presidential Elections Committee? You have recommended that because they have a critical role, the rules for the establishment

should be entrenched in the Constitution. Could you elaborate on what you would like to see incorporated in the Constitution? Because we may have a problem in not putting too many of the details of the procedures and composition of the Presidential Elections Committee in the Constitution itself. But you may have a point that some basic elements about the Presidential Elections Committee perhaps ought to be included in the Constitution. Could you elaborate on what are the elements that you would like to see enshrined in the Constitution? - (*Mr Rajah*) With regard to the role of the Presidential Elections Committee, it depends on what is to be the philosophy behind who is qualified to become President, what your philosophy on that question is. There are some of us who feel that there should be no qualification process and that the only relevant factor should be perhaps the same disqualifications that apply to persons who wish to stand for Parliament. In other words, you do not have to specifically be able to meet some criteria to qualify, provided you are not disqualified by certain other objective criteria, like criminal convictions, etc. However, the Bill proceeds on the basis that not only do you have to avoid the disqualification criteria that apply to MPs, but you have also got to meet some positive criteria to actually qualify before you are a suitable candidate to stand for President. What these criteria are have not been set out in the Bill. What the Bill does tell us is that these criteria will be what are in the opinion or view of the Presidential Elections Committee suitable qualifications. But what the Presidential Elections Committee will eventually decide to be the suitable qualifica-

Mr Rajah (cont.)

tions, we do not know. The Bill does provide or might give a hint in the category of persons who are automatically qualified to become Presidential candidates. But that is a category of persons who actually operate outside the scope of the Presidential Elections Committee. Because, in fact, whether the Presidential Elections Committee likes it or not, they have no say if any person who falls within that criteria wishes to stand for election; he is deemed to be qualified. So if you do not fall within the deemed criteria or the deemed category of persons, then who qualifies to stand as President? If it is something which is very difficult to define, and therefore we are going to leave it in the hands of a group of wise men, the Presidential Elections Committee, then the next question is, who will be the Presidential Elections Committee? So these are two very important points. We feel that these two important points should be addressed in the Bill and specific provisions made in the Constitution itself to guarantee that, firstly, the Presidential Elections Committee again is not packed with persons who can apply such criteria as to exclude suitable candidates, and, secondly, I think the Constitution should also provide certain criteria as to how the Presidential Elections Committee should exercise its powers. But, again, all these requirements only arise if you hold on to the belief that there must be some positive qualification criteria. I think on balance the members of the Council's view is that there should not be the necessity for such positive qualification criteria and that the disqualification criteria for MPs would be sufficient.

Prof. Jayakumar (cont.)

109. If I may just take up on the last point that you mentioned that some members of your Council feel that there ought not to be a pre-qualification. We have just heard this morning some representatives who appeared before us arguing very strongly the opposite viewpoint, and some of the other written submissions also have made this point that because the Elected President would exercise such special functions in the areas of reserves and other safeguard roles, it is necessary to ensure that the people who stand for elections have a minimum amount of, shall we say, experience, proven abilities and stature to discharge their roles effectively. I would like to know how those in the Council, who feel that there should not be this pre-qualification, address this point and what are the arguments that they have for not wanting this pre-qualification? — (*Mr Rajah*) I think most of us would agree that whenever you have an important post or appointment or a job or a position, like the President or the Prime Minister or Members of Parliament, for example, we all would like to get the best man for the job. The problem is, how do we determine? How do we select who this best man is? Rightly or wrongly, the system that we have opted for is the one-man-one-vote system on the basis that since the Government is going to affect all the people in the country, that all the people in the country should have the right of say to decide who it is that they want to be their Members of Parliament or to be their leaders. However, there is a certain basic criterion which excludes certain categories of persons and this is the conviction category, and this has been

with us for so long. It has been accepted and we have learnt to live with it. If there are some other better criteria by which we could impose on everybody and say; "Look, these are definitely much better criteria by which we can choose our leaders" then I suppose we should apply that criteria to the selection of the President, as indeed we should seek to do it in the selection of our Members of Parliament and Prime Minister. But unfortunately, or fortunately, most of us in the Council do not know what is this better form of arriving at this correct choice of persons or criteria, and so we thought that it is probably best to leave it to the time-tested system of one-man-one-vote which we are all used to. So it is simply on those grounds that we feel that there should not be positive qualifying criteria.

110. I have one more question. Let us assume that the basic approach in the Bill is retained with modifications and refinements. In other words, let us assume that the approach of pre-qualification is there and therefore we retain the role for the Presidential Elections Committee. In your submission, you have advocated that the decisions of the Presidential Elections Committee should be subject to judicial review. We have heard another lawyer who appeared before us strongly arguing against this. But I would like to understand the exact scope of your submission on this point because if the Presidential Elections Committee said Mr X is suitable and Mr Y is not suitable, do you see really that the courts are equipped to review the merits of the decision? Or by judicial review, are you confining yourself to ultra vires, bad faith, and that sort of element? - (*Mr Rajah*) If the amendments, as they even-

tually come into force, set out some objective criteria which the Presidential Elections Committee has to apply, then the scope of judicial review can extend or can go into the areas as to whether the criteria which the Presidential Elections Committee has said apply do in fact apply in the case. But if the Bill does not set out the actual objective criteria, then the judicial review will be confined to such situations as ultra vires and bad faith.

111. I understand. In other words, if a certain amount of judgmental discretion is given to the Presidential Elections Committee, such as persons who, in their opinion, will be considered fit and proper and so on, then you do not envisage that that be subject to judicial re-examination. But if a person who is above the age of 35 is qualified or has one of the qualifications, and the Presidential Elections Committee were to disqualify him and stated that the reason was that he did not meet the qualification age, then that objective criteria should be reviewed? - (*Mr Rajah*) That is correct. And even, in the first instance that you mentioned, Mr Minister, if in fact it could be shown that there was some bad faith or mala fides, then there would be still some review.

112. I understand. That would come under the established concept of judicial review? - (*Mr Rajah*) That is right.

Mr Goh Chok Tong

113. On this question of criteria for Presidential Election candidates, if I may use the analogy of a football team. If you have to choose a goalkeeper, and not just a goalkeeper to decide on how the match goes, but a goalkeeper who can save penalty kicks, who should choose this goalkeeper? We leave it to the spectators

Mr Goh Chok Tong (cont.)

and anybody who can volunteer to be a goalkeeper can be put to the vote by the spectators, or should we leave that choice to the coach and to a few select members who know which player can qualify to be goalkeeper? — (*Mr Rajah*) If you are dealing with the analogy of a football team, then certainly I would leave it to the coach or the trainer or whoever it is in charge of the team. But in a situation like this, where you are selecting in fact one of our political leaders, and I think the post of the President is in fact very much a political post, then I think you would probably still have to leave it to the people.

114. Yes. I think it is the people who finally decide on who should be the President. But do we not want a situation where they have a choice and whoever they choose could do the job very well. In other words, as recommended in the Bill, there is a Committee that screens potential candidates, then the voters know that whoever they select can do the job competently. It is a choice between two or three qualified goalkeepers, but who is the better one or the best one will be left to the voters. Would that not be superior to a blind choice? — (*Mr Rajah*) If in fact the Presidential Elections Committee carries out its functions in a way where there was somebody sitting upstairs looking down upon us and he says, "Yes, this is the right choice. These are the three or four or five people who are the best." But, unfortunately, it is so difficult to decide who is right or who is wrong in a situation like this. There may be someone who has been disqualified by the Presidential Elections Committee and this

someone maintains, "I should have been qualified. You should at least have given me a chance and let the people decide whether I am superior to the four whom you have selected." There could be this problem that you were not given a chance to vote for whoever it is you thought best. It is like saying, "I give you a choice of whatever colour you like, provided you choose red, blue or white." Somebody might prefer purple, and that is the problem.

115. But you would agree that in my analogy of a goalkeeper you would not leave the spectators to choose when the whole game hinges on who can save that penalty shot to decide who is the winner? — (*Mr Rajah*) I would certainly agree with that analogy.

BG Lee Hsien Loong

116. Mr Rajah, can I refer you to page 16, paragraph 37, of your submission. Could you read it out, please? — (*Mr Rajah*) Certainly. Paragraph 37 deals with new Article 37J which deals with the proceedings of the Council of Presidential Advisors. We say that:

"It is unclear why the Council of Presidential Advisors should not be entitled to hear objectors or examine witnesses with regard to any matter which is being considered by the Council. This seems an unnecessary fetter on the ability of the Council to seek assistance in formulating its views."

117. Do I understand then that you would be in favour of giving the Council the power to call witnesses and to ask for information in its own right? — (*Mr Rajah*) Yes. We are in favour of the Council having these powers. Of course, it does not have to exercise these powers if it does not choose so. But if it wishes to

do so, then we feel that it should have the powers.

118. What it means is that the Council will have the power to call civil servants before it to render account as to how the state of the finances is proceeding during the year. It is not just an enabling provision but you would be giving it the power to call people before it. Is that your position? - (*Mr Rajah*) The importance of the Council of Presidential Advisors is that when it comes to the overriding provisions of the Supply Bill, if the Council of Presidential Advisors advises that a particular Supply Bill, although it is a deficit Bill and it is drawing on reserves, should be accepted, but the President disagrees and says, "No, I do not wish to accept it", then the Prime Minister, if he obtains a sufficient majority in Parliament, can override the President's decision. The President himself, when he comes to the decision as to why he wants to disapprove the Supply Bill, has access to various bits of information. He can call up a civil servant, members of statutory boards, and obtain the information from them. However, if the Council of Presidential Advisors does not have the same power to do so, if it wishes to exercise it, then it is probably deciding, or it could decide, to support the deficit Budget Bill because it does not have the same information that the President has when he decides not to support it. So there could be that possible problem. However, we see that the Council of Presidential Advisors is going to be a very august body, it is going to be made up of very serious fair-minded persons, and we do not think that they will abuse their powers if they do have it. But we think it is important that they should have

these powers just in case it becomes necessary for them to understand, for example, why it is that the President does not want to approve that Bill. (*Mr Warren Khoo*) May I add one point? This provision which we are talking about, that is, the proposed Article 37J, seems to be modelled after the Article in the Constitution dealing with the proceedings of the Presidential Council for Minority Rights. There is an equivalent provision there that says that all proceedings of that Council shall be held in private and the Council shall not be entitled to call witnesses and so on. There may be a necessity for privacy in proceedings in regard to proceedings of that Council. But certainly for the reason that has been stated by my President here, there may not be any reason at all for this Council, that is, the Council to advise the President, to conduct its proceedings in private and to deprive itself of information which it may need to discharge its functions.

119. There are two parts to it. One is whether it should be entitled to information and the other part, whether the proceedings should be conducted in private. Would you see a similarity between the Council of Presidential Advisors and, take, for example, the Public Accounts Committee of Parliament, which is a Committee of MPs, which can ask for civil servants to appear before it and can ask for information from the civil servants to help the Public Accounts Committee to carry out its functions? - (*Mr Rajah*) What we see should be the kind of information available to the Council of Presidential Advisors is essentially the same kind of information that is available to the President, so that both of them have access to the same kind of informa-

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Mr Rajah (cont.)

tion, because they are going to be passing their views on the same matter.

BG Lee Hsien Loong (cont.)

120. I think we can consider that. On the second question, whether the proceedings should be in private, what is your view? - (*Mr Rajah*) We think that it should be in private. I mean the President does not conduct his inquiries in public.

121. You will not be in favour of giving the Council of Presidential Advisors the power to hold public hearings, for example? - (*Mr Rajah*) No. I do not

think that is the thrust of our recommendations.

122. You would not be in favour of that? - (*Mr Rajah*) No.

BG Lee Hsien Loong] All right. Thank you.

Chairman

123. Any more questions? If not, thank you very much, gentlemen, for coming here this morning. We will be sending you a transcript of the proceedings for your verification purposes in a few days' time. Thank you very much? - (*Mr Rajah*) Thank you, Mr Chairman.

(The witnesses withdrew.)

Chairman] We have heard the representors for today and we will meet again tomorrow morning at 10.30 to hear more oral evidence.

Adjourned accordingly at 12.35 pm.

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SELECT COMMITTEE ON THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT NO. 3) BILL

THURSDAY, 15TH NOVEMBER 1990

10.30 am

PRESENT:

Mr Speaker (*in the Chair*)

Mr Abdullah Tarmugi	:	Prof S Jayakumar
Mr S. Chandra Das	:	BG Lee Hsien Loong
Mr Chiam See Tong	:	Dr Ong Chit Chung
Mr Davinder Singh	:	Dr Ow Chin Hock
Mr Goh Chok Tong	:	BG George Yong-Boon Yeo

ABSENT:

Mr S. Dhanabalan (*on leave of absence*).

In attendance:

Attorney-General's Chambers:

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

Ms Tan Peck Cheng, Deputy Senior State Counsel.

Mrs Owi Beng Ki, State Counsel.

Auditor-General's Office:

Mr Chee Keng Soon, Auditor-General.

Mr Teo Chee Khiang, Deputy Auditor-General.

Ministry of Finance:

Ms Low Sin Leng, Deputy Secretary (Budget Division).

Mrs Pek Siok Ching, Director (Revenue Division).

Mr Chris Liew Peng Fook, Accountant-General.

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Chairman] Good morning. I call the meeting to order. Can we have the first group of witnesses?

Paper 27 - The following representatives of the Institute of Certified Public Accountants of Singapore, 116, Middle Road #09-01/04, ICB Enterprise House, Singapore 0718, were examined:

Mr Keith Tay, President.

Mr Tan Kok Hiang, Council Member.

Mr Kenneth Chew Keng Seng, Member.

Mr Lim Hock San, Council Member.

Mr Gerard Ee Hock Kim, Council Member.

Mr Don Ho Mun-Tuke, Council Member.

Mr Lee Wai Kok, Executive Director.

Chairman

124. Good morning. Please be seated. For the record, could you please state your names and the offices that you hold? — (*Mr Keith Tay*) Mr Chairman, my name is Keith A.K. Tay. I am the President of the Institute of Certified Public Accountants of Singapore. Would you like me to introduce the members of my team?

125. You may? - (*Mr Keith Tay*) Starting from my right, next to me is Mr Lim Hock San. He is the Council Member of the Institute and also Director-General of the Civil Aviation Authority of Singapore. Next to him is Mr Don Ho, a Council Member and a partner of Deloitte & Touche. At my extreme right is Mr Kenneth Chew. He is a member of the Institute and Group Corporate Planner of Prima. On my left is Mr Tan Kok Hiang, a Council Member. He is the Deputy Managing Director of Trans-Pacific Limited. Next to him is Mr Gerard Ee, a Council Member and a partner of Ernst & Young. Finally, Mr

Lee Wai Kok, Executive Director of the Institute.

Chairman] Thank you very much for your written submission. The Committee will take into consideration the views that you have expressed. For this morning, we would like to pose some questions to you.

Mr Goh Chok Tong

126. Mr Tay, let me thank you and your Council members for your submission. You have made some useful technical points which will certainly improve the Bill, particularly in relation to safeguarding the reserves of the Government and companies. I want to ask you some questions on your comments on "deemed eligible candidates for Elected President". In other words, I want to ask you questions on the criteria for a candidate to become President. Through your personal knowledge of how a person becomes a Certified Public Accountant, could you please tell us what are the functions of a Certified Public Accountant? — (*Mr Keith Tay*) The function of an

accountant varies a lot depending on where he is working. If he is in practice, his job would really be, if he is an auditor, to see that the financial statements which are presented to him show a true and fair view of the state of affairs of the particular entity and also the operating results of the entity. Whereas if he is working in a commercial or industrial organisation, his job normally includes financial control over the operations of the corporation. But some of them go into management and get involved in general management duties. So it varies a great deal, depending on which sector of the economy he is in.

127. What is the process of one becoming a Certified Public Accountant? — (*Mr Keith Tay*) In the case of the training of an accountant, first of all, he would have to pass the necessary professional examinations, which would take at least three years or more, depending on the person. Then he would need to go through a period of relevant practical experience, which varies depending on the person. Generally speaking, he needs at least three years before he can become a fully qualified accountant.

128. Are there other criteria involved? In other words, if you have passed your examinations, can you just apply to become a Certified Public Accountant? — (*Mr Keith Tay*) No. I think what you are referring to could be the "fit and proper" criteria. Before a person can be admitted, he would have to be verified by others that he is a fit and proper person, that means it covers his personal character, integrity and so on.

129. Is there a body to decide who is a fit and proper person? Which is this

body? — (*Mr Keith Tay*) In our case, it will be our Institute that will decide. We do so through committees and the secretariat and also this would then be endorsed by the Council.

130. Which means that not everyone can be a Certified Public Accountant. First, you must take certain examinations. You must pass your examinations and then you have to be deemed to be a fit and proper person before you can become a Certified Public Accountant. Am I right? — (*Mr Keith Tay*) Yes. But normally when a person is registered as a student, for example, if he is involved in any wrongdoing - he has committed a crime or something - he would be banned from further taking the examinations. He would normally be excluded right at the start.

131. The function of a Certified Public Accountant is important. He helps to safeguard the reserves or the accounts of a company, besides just working on accounts itself. His contribution depends on the role which he plays, but it is an important function in society. On the scale of 10 to 1, and here we are examining the criticality of the function, the impact on people's lives, the impact on organisations, with 10 being given the most heavy weightage, in terms of its impact, how would you place the Elected Presidency and a Certified Public Accountant? In your view, what is a rough estimate on a scale of 10 to 1? — (*Mr Keith Tay*) There could be no comparison because obviously the Elected President's responsibilities are much heavier than those of an ordinary accountant like us. On a scale of 10 to 1, if I may hazard a guess, I would say that the

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Mr Keith Tay (cont.)

President's role would be very near to 10. Whereas we would probably be paled in comparison. I would not dare say more than 5 in that sort of comparison.

Mr Goh Chok Tong (cont.)

132. Should the criteria for an Elected President therefore be more stringent or more lax than that for Certified Public Accountant? — (*Mr Keith Tay*) Of course, the criteria ought to be very stringent because the whole country's assets are involved and that must be a very important consideration.

133. You would therefore not support the suggestion that almost anybody should be eligible to stand for election as the Elected President? Or would you argue for that? — (*Mr Keith Tay*) We have discussed very briefly in the Council on this point. We are quite unanimous in our view that the candidates should be people of sufficient standing in terms of qualifications, experience and personal qualities.

Mr Chandra Das

134. If I may just carry on, Mr Tay. In your submission you mentioned that the deemed to be eligible list of candidates should be illustrative and not prescriptive. Would you like to elaborate on this? — (*Mr Keith Tay*) Yes, Mr Chairman. What we mean is that if you set up a list that these are the people who have the right experience and qualifications, then that list should be illustrative, rather than have it written in such a way that this list is conclusive, ie, anyone falling within that list would be automatically eligible.

We propose that the list in the Bill should perhaps be illustrative as general criteria of the sort of people that are felt to be suitable.

135. You would still maintain that everybody should appear before the Presidential Elections Committee? — (*Mr Keith Tay*) Yes. We feel a bit strongly about this point because, as we were saying, the point about personal qualities is a very important attribute which is not covered in the listing.

BG Lee Hsien Loong

136. Mr Tay, can I refer you to your submission, the Executive Summary, paragraph 3a? Can you read it out, please? — (*Mr Keith Tay*)

"Budgets of the Government, Government companies, and statutory boards

In order to achieve the financial objectives with the minimal costs we recommend the following self-regulatory controls:-

(i) The responsible officials [i.e. chairman and chief executive officer, or the appropriate Government official] should attest as to whether the budgets for which they are responsible for monitoring are likely to draw down the frozen reserves.

(ii) The Elected President should have the reserve power to direct the Auditor-General or any approved external auditors to review the budgets and to check the validity of the aforementioned attestation. If the Elected President vetoes any budgets, the respective entities should resubmit a revised budget within 3 months from the first day of the financial year.

(iii) If the Elected President still vetoes the revised budget, the Government should be permitted to spend the previous year's expenditure only if the current year's rates of revenue collection remain unchanged from the previous year."

137. One of the main functions of the Elected President is to ensure that proper controls on spending of reserves and on

financial procedures. When you propose these arrangements, do you have in mind that they will be in addition to what is already provided for in the Bill, or in place of what is provided for in the Bill? — (*Mr Keith Tay*) We find that from the wordings of the Bill, it would appear that the President, or the people who would be assisting him, will have to go through each and every budget every year, ie, the budgets of the Government companies and statutory boards. That would be quite a heavy burden which may not be necessary. Therefore, we propose a system whereby there will be in-built internal controls (a check and balance system) so that the system itself in the Government administration could take care of a lot of this verification and detailed work and allow the President to focus only on exceptions.

138. Can you explain how your mechanism is intended to work? - (*Mr Keith Tay*) What I could do is I would refer to the provisions in the Bill and explain why we feel that this is necessary. If you refer to the new Article 22A, clause (2), which is similar to new Article 22C, clause (2), it provides to the effect that every designated statutory board and every designated Government company has to present its budget to the President for his approval each year. If this is done, as I said earlier, the President will have to go through and review each and every budget, so that if there is a situation where the accumulated reserves will be drawn down, he might not be able to pick it up readily. So we proposed this system. The main feature of the system would be that a responsible official reports to the President as to whether the budget is

likely to draw down the reserves accumulated during the term of the previous government. Then the President would focus on the exceptions, that means those budgets which are likely to draw down the accumulated reserves. And whenever the President deems appropriate, for example, if he is not satisfied with the budget report, he could have the power to direct the Auditor-General or anybody deemed appropriate to review the budget and report to him directly. Then there should also be a system to ensure that the actual performance conforms with the budget. Although there is no draw-down in the budget, the actual expenditure may still draw down the reserves. So we propose that the scope of the annual audit be extended so that the auditor would include in his report as to whether or not the actual results of the entity give rise to a draw down in reserves which is not anticipated in the budget.

139. So you are proposing that when a budget is put up for approval, it must come with a certification? - (*Mr Keith Tay*) Yes.

140. The President can choose to believe the certification or he can query it, in which case he can ask the Auditor-General to investigate the statutory board or the company, and verify whether it is accurate and true? - (*Mr Keith Tay*) That is right.

141. It will strengthen the powers of the President in carrying out this very important function. I think we will consider it carefully. One major factor in crafting the provisions has been to ensure a balance between having an effective Elected President able to pick up deviations from normal spending proce-

BG Lee Hsien Loong (cont.)

dotes and, on the other hand, giving the Government and the statutory boards and companies enough flexibility to operate without having to look over their shoulders all the time. Without a certain flexibility, the statutory boards cannot function. You have extensive professional experience working with statutory boards, sometimes auditing their accounts. I think Mr Lim Hock San runs a statutory board. Do you feel that the provisions as stated, plus your recommendations, will be a reasonable compromise, allowing statutory boards to function as effectively as they have been able to do so far? - (*Mr Keith Tay*) Yes, I think so. I think if we sort of fine-tune the provisions so that the Elected President will not be over-burdened with the detailed work, this will reduce cost and it will become more productive. It will be an improvement.

142. Would Mr Lim Hock San have anything to add, because he will be one of the people subject to audit by the Elected President? - (*Mr Lim Hock San*) Yes. I would, of course, be speaking as a council member of the Institute rather than as the CEO of a statutory board.

143. Yes, of course, in a detached way? - (*Mr Lim Hock San*) We feel that an important element here is the investment appraisal procedures. In a normal accounting system, we have snapshots of an organisation, of an entity, for each accounting period. But we know that development expenditure or capital investment projects have benefits stretch-

ing beyond a financial year. Therefore, it is very important that the investment appraisal procedures for the statutory boards, for the Government or for the Government companies, highlight the fact that these development expenditures are intended to improve the infrastructure, to strengthen the productive capacity of the nation or to enhance future earnings potential. Furthermore, these expenditures should not be looked at in the same light as recurrent expenditures which are consumption in nature. So we feel very strongly that, together with the system outlined by Mr Keith Tay, we need a systematic but not cumbersome investment appraisal procedure, which takes into account the fact that the expenditure at a certain point in time brings benefits not only in this particular point in time but over a period of time. Yet at the same time, how do we avoid high risk projects by the statutory boards? Here we enter into an area of how do we prevent the drawing down or running down of the cumulative reserves of the present generation which the future generation will then have to carry the burden. We could envisage some percentage, of the net worth, defined as the excess of assets over liabilities, or a value dollar criterion of X million dollars or X hundred million dollars for which such capital projects would have to be endorsed by the President and which he has to give his assent.

144. You would feel quite comfortable with that sort of arrangement, because when you are talking about very major capital investments, there is a very large element of subjective judgment which goes into the evaluation. For

example, to reclaim 500 hectares of land may cost \$1-\$2 billion. What value you can get out of it over the long term for infrastructure, for recreation, for housing, depends on the state of the economy and, to some extent also, on the value judgment of the person who is making the decision. He may say, "I need a public park of that size". But somebody else can say, "I disagree. I don't need one." So we have to be very careful when crafting the provisions so that the weight of discretion remains with the Executive. The President should only come in as a last resort, if he thinks, "This is obviously going to be a dreadful waste of money. We must stop it." It should not be the other way round. Because it is not the President's job to decide whether or not we need a park. It may be the Government's job, the Executive's job? - (*Mr Keith Tay*) Mr Chairman, on this point a simple approach could be to categorise the different types of investments that a company, a statutory board or the Government could be involved in. Broadly speaking, there may be three categories. The first category may be portfolio investment; the second category infrastructural investment and the third category, strategic business investment. If we have clearly defined investment policy and criteria for each of these, which can be modified from time to time, that would take care of all the different competing requirements and it would help to achieve the objective of safeguarding the financial reserves. Because based on the current wordings of the Bill, the emphasis is on control over expenditure. There is no mention about control over investments. That aspect may need to be taken care of.

Mr Chandra Das

145. Mr Tay, can I take you to another part of your submission in which you mentioned that the Government should consider converting to a commercial basis of accounting? Could you please elaborate on this? - (*Mr Keith Tay*) Yes. Our basis of accounting in Government, like in quite a number of countries overseas, is a cash basis of accounting, which is very different from the commercial basis. Let me briefly outline the major differences between the commercial basis and the cash basis. In the commercial basis, when you have capital expenditure incurred, you treat it as asset. Whereas in the cash basis, you just treat it like ordinary revenue expenditure. Another difference is that in the commercial basis, you take into account, in the case of an expense, the time span to which it relates. For example, if the money is spent in respect of 1990, then it will be reflected as a 1990 expense even though it may be paid in 1991. Whereas in the cash basis, the key criterion is when it is paid. So you may have a 1990 expense paid in 1991, it is regarded as a 1991 expense. You can see the disadvantages of the cash basis of accounting. Because of the cash basis of accounting, you will find that there are assets of the country which have not been recorded because they have been written off, things like Government buildings, roads, bridges and so on. The Bill defines "reserves" to mean excess of assets over liabilities. If these assets are not recorded, then you will find a situation where the amount placed under custodial control of the President is much less than the actual amount because a lot of assets

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Mr Keith Tay (cont.)

are not included. Another point is that in the case of companies and statutory boards, you find that the fixed assets, like land and buildings, are stated at historical cost, which are normally substantially lower than market values. So in order to come up with realistic figures, these may also have to be revalued to market values, to arrive at the true accumulated reserves.

Mr Chandra Das (cont.)

146. I have one last question, Mr Tay. Should the income generated from our reserves be also subject to Presidential approval? — (*Mr Keith Tay*) This is a difficult question. Basically, my simple answer to that is no, because it is hard to segregate how much of the profit relates to the efforts and how much is passive income derived from the assets of the accumulated funds. It is very arbitrary. How are you going to distinguish it? Another problem is that after a few years you will find that you will have to allocate the assets between accumulated reserves and current reserves, because the earning capacity of the assets varies. Because of all these complications, it will be futile actually to try to bring it under control. You might even argue on a further point that the income generated in future could all be attributable to the accumulated reserves, in which case there will be no flexibility for a future government. If you intend to preserve the capital sum in the accumulated reserves, a good way would be to index the amount based on the inflation rate, maybe using the Consumer Price Index, for example.

Mr Chiam See Tong

147. Can I just ask Mr Lim Hock San? This Bill gives additional powers to the President to check on statutory boards. At the moment, there are no such checks. So who checks the statutory boards at the moment? — (*Mr Lim Hock San*) The annual reports of the statutory boards are presented to Parliament each year. The statutory boards report to the Minister responsible for the statutory board. Thus, the accounts, the management, the operations, are accountable to Parliament through the Minister responsible.

148. Under the present system, is it a safe system? Is there a possibility of a statutory board running down its reserves irresponsibly? — (*Mr Lim Hock San*) All statutory boards will from time to time make capital investments which vary in magnitude. It has not happened in Singapore but it has happened elsewhere where government organisations have embarked on massive capital investments with good intentions on infrastructural projects. I recalled one African country with oil revenues, over a five year period, of a hundred billion dollars. So they invested in roads, schools, hospitals, airports, and so on. Subsequently, when the price of crude oil dropped they had great difficulty in maintaining those massive capital infrastructures because they consume lot of maintenance expenditure and day-to-day running expenditure. It is therefore possible even for a statutory board to enter into investments which, if I could use the word, "bet" the whole organisation. I always remember a company like Boeing, for instance -

149. Let us not go into the management of foreign countries. I am more concerned with Singapore. Under our present system, I am sure there are checks on the spending of the statutory boards in Singapore. My question is: is it safe enough at the moment? Do we need additional checks by the President? Are you saying that there is a flaw in the system now and that we need additional checks? — (*Mr Lim Hock San*) The system works at present. But there is no guarantee that the system will still continue to work.

150. Of course. There is no guarantee to any system? - (*Mr Lim Hock San*) Yes. So what we are suggesting is whether we could improve the system with some checks and balances. We are asking that, on any major capital project, is there any harm in having a second opinion or to have some checks and balances as to whether the intended capital project, which stretches over 3, 5, 10 or 15 years, is desirable, feasible or financially sound from the point of view from both the organisation as well as the country as a whole?

151. So it would appear that the main concern is primarily on large investments, and not on recurrent expenditure. So it would be a judgment then. Nobody can ensure whether a huge investment for that particular year would or would not be a good investment. So it boils down just to a judgment. Am I right? It is not a question of corruption or of people running down the money for wrong use? - (*Mr Keith Tay*) It might help if I explain to you the difference between the current system that we have now and the pro-

posed system. The current system checks on the stewardship of management, that means to see that proper controls are in place, whereas the proposed Bill checks on the decision-making process of management.

152. You agree with me that there are no problems there. As I understand it from Mr Lim Hock San, basically the problem area is on investment. It is not a question of stewardship of the management? — (*Mr Keith Tay*) Because the decision-making process covers both investment as well as operation. (*Mr Lim Hock San*) It covers operations as well because it could well be that in the case of a Government company -

153. Can you run down millions and hundreds of millions of dollars on operations? — (*Mr Lim Hock San*) Why not?

154. But nobody in their sane mind would, would they, with our present checks and balances of the management of statutory boards in Singapore? - (*Mr Keith Tay*) The point is that if you make a foolish decision, then even with the best intentions you can run down the present system. So it is not a question of only investment. The operations can consume a lot of cash.

155. All right, let me put it straight. Is there a flaw in our management system of statutory boards today? - (*Mr Keith Tay*) That is what I am trying to tell you. The current check is on the stewardship aspect. So there is no flaw. But if the intention, as is stated in the Bill, is to check on the decision-making process, then this is a new requirement.

Mr Chiam See Tong] Mr Keith Tay, may I enquire whether you are involved in the management of statutory boards?

Chairman] Mr Chiam, could you allow the witness to finish the answer first?

Mr Chiam See Tong

156. In fact, my question was directed at Mr Lim Hock San, and Mr Keith Tay just talked? - (*Mr Keith Tay*) I am trying to help you by explaining to you and you should be grateful.

Chairman

157. I think it is only proper that the witness be given the opportunity to finish his answer before Mr Chiam poses another question. So would you like to continue your answer, Mr Keith Tay? - (*Mr Keith Tay*) I think I have explained quite clearly to Mr Chiam. I hope he understands it.

Chairman] Mr Chiam, do you want to proceed with your questions?

Mr Chiam See Tong

158. No, he has still not answered that question? — (*Mr Keith Tay*) What answer do you want?

159. I am interested to know whether there is anything wrong with the system of management of our statutory boards today. If there is a big flaw, or there is something really wrong, then we need an additional check on it. That would be understandable? - (*Mr Keith Tay*) I am telling you that there is nothing wrong in the system of management of statutory

boards and Government companies now. But the intention of the proposed Bill is to try to check on the decision-making process. So if your decision is wrong, for example, and you incur a lot of losses, there is no dishonesty, the only way to counter this is to have a check on the decision-making process which this Bill provides.

160. That is right? - (*Mr Keith Tay*) So our current system has a strong check on the integrity of the system.

161. So it boils down to the question of just judgment on big investments to be made by statutory boards? - (*Mr Keith Tay*) Now, you understand.

162. I am from the Opposition and I can see straightaway that there may be a problem because this is a question of human judgment. If one day, an Opposition comes into power and holds the reins of Government, and the Elected President is a political person coming from another party, and the Government of the day wants to make a big investment. In their judgment it is a good investment. It is quite easy for the President to rule otherwise, is it not, because it is a question of judgment? You say yes, and I say no? — (*Mr Keith Tay*) No, I think basically it all depends on the individual who will be elected as President. So the interest of the President must be the interest of the whole country. That must be the interest that he must have in his heart. If that is the case, it does not matter which particular party he belongs to. So it is a question of protecting the integrity of the system.

163. We are not talking about an ideal position, Mr Tay. We are talking

about a system. We are not talking about the idealism of a man? - (*Mr Keith Tay*) No, I am not talking about idealism. I am talking about practicalities.

164. Yes, that is the practicality I am talking about. If you have got a President coming from a different party from the Government of the day in power, then there would be problems, would there not, in regard to big investments by the Government? - (*Mr Keith Tay*) Not really. Because if the interest of the President is the well-being of the country, it does not matter what political affiliation he has. The answer will still be the same. The objective will still be the same. (*Mr Kenneth Chew*) Mr Chairman, can I just clarify? Mr Chiam, I remember that yesterday you were asking whether the President should not belong to any party and I have stated it, and I think what my President has stated is very clear. The President should be, as you have said before, a person who would get out of his political connection and become above politics which you wanted. So how could he be on the Opposition side when he is the President? He would have to be somebody who has the interest of all Singaporeans at heart. He would be making his decision on that basis, and not on any other criteria. He should not be anyway, or else he would not have been elected as President, to begin with. I am sure that the Presidential Elections Committee would definitely have looked into it.

165. I agree with you, Mr Chew, wholeheartedly, but unfortunately, the Bill, as it stands, is not like that? - (*Mr Lim Hock San*) Mr Chairman, I wonder whether I could amplify a little on the

concept of "judgment" which Mr Chiam raised. By using the word "judgment" he seems to give the impression or connotation that it is very capricious or whimsical. I would say that in a capital evaluation project, there will be assumptions made on traffic forecasts, risks, returns, expenditure, tradeoffs, etc. We do agree that different individuals looking at a particular project may come up with different conclusions. Nonetheless, assuming that the Elected President, as Mr Keith Tay has pointed out, has the country's interest at heart, then the second opinion or judgment which he arrives at, based upon the merits or demerits and the risks, returns, trade-off, of a particular project, should not be determined by whether the project was initiated by another party. I should think so. So it is not whimsical. It is based upon careful analysis and careful consideration of how the burden of a particular project would be borne by this present generation or by a future generation.

166. Thank you, Mr Lim. It is obvious that the statutory boards do not make whimsical decisions. If you decide to open up another runway, of course, you must get facts and figures, forecast of tourist arrivals and the load on the airport. This is the normal way on how investments are made. You must get the full set of facts and figures, and be very scientific about the whole thing. We do not just look at the crystal ball and make a guess and say we should invest millions of dollars. So my point is, without repeating, right at the moment, it would appear that the statutory boards have already got a good system and it would appear that nothing can go wrong under our present system. Do you agree with

Mr Chiam See Tong (cont.)

me?— (*Mr Lim Hock San*) I do not think we can assume that anything cannot go wrong, or that any single individual or group of individuals will have the kind of monopoly of intelligence, the genius, to say with absolute certainty that they are correct. What we are suggesting is to introduce some checks and balances in the system to allow the Elected President to say that if this project involves a huge sum of money and in a way is betting or risking the country's or that organisation's reserves, then it merits a second look.

BG Lee Hsien Loong

167. Can I ask Mr Lim Hock San? You earlier alluded to countries which have invested hugely in infrastructure on the assumption of oil revenues. Then you mentioned briefly Boeing, which had to make very large investments which would have, in effect, betted the worth of the whole company. Could you elaborate on some of the risks involved, and some of the relevant details of these cases? Although they happened overseas, our concern is that such a thing might also happen in Singapore? — (*Mr Lim Hock San*) Let me start off with the example of Boeing. As we all know, the airframe manufacturing market is very uncertain, very volatile and the R&D cost involved in an aircraft mainframe manufacture is horrendously high, running into billions, if not tens of billions of dollars. Even a company like Boeing considers, when undertaking a massive project not to "bet" the whole company on it. It tries to secure pre-orders as far as possible. It also enters into strategic alliances with

other airframe manufacturers around the world to reduce the risk. So the whole idea is, how do you lock-in some certainty on the demand side and how do you ensure some risk diversification and risk sharing as far as the supply side is concerned, so that you do not result in one investment decision on a new generation of aircraft placing your whole organisation in jeopardy. I think too much is at stake for the shareholders, the employees, the suppliers and the customers, to bet the whole organisation in any one single project. With regard to this African country, I do not think it is proper for me to mention the name. Suffice it to say, when oil revenues were booming they were just spending money freely. One could easily justify those massive spending on the basis that it was improving and enhancing the infrastructure of the country. There were some investments which are sound and there were some investments which, with the benefit of hindsight, do not turn out as well as they should. Of course, they had many investments which were ill-advised, having depended upon their consultants. When oil prices dropped, all this was before the current Gulf crisis, they found great difficulties in even maintaining those infrastructure projects. Then their investments became white elephants, without the demand for it, and without the ability to maintain those expensive infrastructures. So not all infrastructure investments are necessarily correct. There are some which are good, and some which we have to look at in terms of timing. Like in all commercial companies, we need to look at the timing of the investment because there is a time value of money. In everything there is some cost associated with it. We do not

operate in a free cost of capital world. So this has to be taken into account.

168. But, of course, even under this Bill, not all big investments will go to the President. Because if the statutory board concerned, or the Government, is generating the revenues and surpluses during the year, it can use those revenues to make those investments entirely unilaterally without consulting the President, and the President has no say as to whether they should proceed. It is only when you touch 'old' money that the second opinion is necessary? - (*Mr Lim Hock San*) This is absolutely right.

Mr Goh Chok Tong

169. Mr Chairman, the discussion here seems to be premised on the good intentions of management. In your work, have you come across companies where in fact the Chief Executive has less than total honest intentions in their investments? Are there occasions where you have to qualify the accounts of certain companies? Has anyone of you, in your work, come across such a need to qualify the accounts of companies? - (*Mr Kenneth Chew*) Maybe not in the Singapore context, but in the overseas context, I have come across a number of companies. I would not like to mention names or countries involved. Basically, I will give you a simple example. In the heydays of the property market, they have valued a lot of their fixed assets; especially land and buildings, on an inflated basis. So when it comes to a time of high inflation and high interest cost, and where they have a lot of high yielding, there is no positive cash flow. So they turn out to be losses and the demand

curve goes down. Then the auditors have to re-look at it and re-assess the value of the assets. And there have been disputes between management and the auditors themselves because a lot of this valuation is a question of judgment, based on appraisals of valuers, and no two valuers value the same. I know that no two lawyers come to the same conclusion sometimes, especially when we are on opposing sides of the picture. So in some cases, they have qualified the accounts. And looking on hindsight, those companies have gone into liquidation.

170. In Singapore's context, we have the recent experience of Pan-Electric, haven't we? The shareholders' point of view, I think, will be that, had there been a body that could have served as a check on the management when it draws down the reserves of that company, somebody gives a second opinion, I think the shareholders would have been protected and certainly very grateful. We are looking for that mechanism whereby we have an additional check on a management which is intent on embarking on investments which will result in the whole company collapsing. In the context of companies, we have not quite got that mechanism to check on mismanagement of a company. Here we are discussing the worth of a country, the total assets of a country, the future of a country. We are suggesting a mechanism whereby it can help to protect the interests of Singaporeans or the shareholders of our reserves and assets? — (*Mr Keith Tay*) Mr Chairman, on the question of wrongdoing in companies and so on, it is necessary to have a second check and for that reason we have proposed, and I think the Government has adopted, the introduction of Audit Com-

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Mr Keith Tay (cont.)

mittees which will become mandatory from March next year. This will be another check and balance to ensure the integrity of the management system. So this proposal in the Bill is in a way a similar mechanism.

Dr Ow Chin Hock

171. Mr Chairman, may I ask Mr Tay one question? You have recommended some self-regulatory controls on budgeting, investment and reserve withdrawal. Do you have a similar recommendation on self-regulatory control on borrowing by the Government or by statutory boards? - (*Mr Keith Tay*) Already in the Bill, I assume you are referring to the provision to cover commitments by the Government on loans, debts and guaran-

tees. It is well taken care of under Article 144. In that provision, I recall, if there is such intention, this will have to be approved by Parliament and will be subject to the concurrence of the President. So I feel that the existing provision is adequate.

172. And you do not propose any additional self-regulatory control? - (*Mr Keith Tay*) I think the existing provision should be sufficient.

Chairman

173. Gentlemen, thank you very much for coming here this morning to discuss this matter with us. We will be sending you a transcript of the proceedings for your verification? — (*Witnesses*) Thank you.

(The witnesses withdrew.)

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Paper 24 - The following representatives of the National University of Singapore Democratic Socialist Club, NUS, Kent Ridge P.O. Box 1033, Singapore 9111, were examined:

Mr Hoon Dah Hao, President

Mr Edwin Pang, Assistant General Secretary

Miss Tang Meen Er, Public Relations Secretary

Mr Gary Chan, Publication Secretary

Mr Goh Keng Hock, Assistant Public Relations Secretary

Mr Charan Singh, Member

Chairman

174. Good morning. Please be seated. Could you state your names and the offices that you hold for the record? - (*Mr Hoon Dah Hao*) Mr Chairman, Sir, I am Hoon Dah Hao. I am the President of the Democratic Socialist Club. (*Mr Edwin Pang*) Mr Chairman, Sir, a very good morning. My name is Edwin Pang. I am the Assistant General Secretary of DSC and I will be the spokesman for the team. (*Mr Goh Keng Hock*) Good morning, Mr Chairman, Sir. My name is Goh Keng Hock, I am the Assistant Public Relations Secretary. I am a first-year Engineering student. (*Mr Charan Singh*) Good morning, Mr Chairman, Sir. My name is Charan Singh and I am a member of DSC. (*Miss Tang Meen Er*) Good morning. My name is Tang Meen Er and I am the Public Relations Secretary of DSC. I am a law student. (*Mr Gary Chan*) Good morning, Mr Chairman, Sir. I am Gary Chan. I am the Publication Secretary. I am from Law, second year.

Chairman] Thank you very much for your written submission and for coming here this morning to assist the Committee.

Prof. Jayakumar

175. Mr Pang, this is not the first time that your Club has submitted a representation to a Select Committee, is it? - (*Mr Edwin Pang*) No. Sir. This is not the first time. We have submitted representation on the Nominated MPs Bill.

176. Yes. You have raised several points here. But before I go on to individual points, I wonder if you could read out your conclusion on page 6? - (*Mr Edwin Pang*) Our conclusion states:

"With the exception of the above proposals, we are generally in support of the Elected President Bill and its being a check on the Government in ensuring that the latter does not abuse its power for its own purposes."

177. So subject to the refinements and modifications which you have proposed, you are generally in support of the approach in the Bill. May I take some of the points that you have raised. You have read that we had discussed some of the issues yesterday. So if I can come straight to the point. One issue we discussed was the question of whether there should be pre-qualifications or everyone who qualifies under the basic requirements should be allowed to stand for Elected Pres-

Prof. Jayakumar (cont.)

ident. Have you given thought to this and what are your views? You have suggested in your representation that the list could be broadened. But I would like to ask a more basic question, Would you agree with the approach of some pre-qualifications or do you think there should be no pre-qualification? — *(Mr Edwin Pang)* Mr Chairman, Sir, because of the importance of this appointment of Elected President, because of its important task of safeguarding the vital interests of the country and its people, we are in favour of the pre-requisites set out in the Bill, because we feel that only the best ought to run in the Presidential Elections. However, we hope that the Select Committee will consider our proposal that the list be expanded so as to include Ambassadors as well as heads of professional bodies.

178. Yes. Those points we obviously will have to consider. But you would have no difficulties if the Select Committee retains the approach of pre-qualification? — *(Mr Edwin Pang)* We agree with the pre-qualifications set.

179. May I turn to one of the other proposals concerning succession to the Presidency in cases of death, illness, and so on. You are not in favour of the approach in the Bill where there is a line of succession involving the Chief Justice and the Speaker. We have taken note of that. The alternative that you have recommended is that the Chairman of the Council of Presidential Advisors should act as President? — *(Mr Edwin Pang)* Yes, Sir.

180. Why have you opted for this approach and not for the approach of a

Vice-President, which some others have suggested? — *(Mr Edwin Pang)* Mr Chairman, Sir, we feel that the Chairman of the Council of Presidential Advisors will be in a position to take on the post of Acting President. We feel that there is really no necessity to amend the Bill so as to include the appointment of Vice-President, If I am not mistaken, there was a submission in the hearing yesterday that the Vice-President sit also on the Council of Presidential Advisors. But we feel that instead of having this Vice-President sit on the Council, why not get the President of the CPA to act as President should the incumbent be unable to complete his term of office. We feel that the Chairman of the CPA would be a good candidate to be Acting President because, by virtue of the fact that he is a Presidential Advisor, he would be very familiar with the functions, the roles and the responsibilities of the President and also, at the same time, he will be more familiar with the problems that are faced by the President and how best these problems can be resolved. Based on his experience, therefore, we feel that he would be in a suitable position to take over the job.

181. Your proposal has some attractive features. But how do we overcome this problem if, in that situation the Chairman of the Council of Presidential Advisors acts as President - he will perform and exercise the functions of the Elected President - during that period (it could be a few months), there could arise tricky issues on budgets and appointments on which the Council of Presidential Advisors has to advise the President. How do we resolve this potential area of conflict of interests? — *(Mr Charan Singh)* Sir, may I answer that

question? I think what we are suggesting is that when the Chairman takes over as Acting President, he should relinquish his post as Chairman for a period of six months and that one of the other Presidential nominees should then exercise the functions of Chairman of CPA. Therefore, the possibility of a conflict of interests would not arise. There will be no conflict of interests.

182. That is a good point. You have suggested various amendments which would strengthen the CPA. You have suggested that the terms or length of the tenure be extended, that there should be security of tenure of some sort for the Chairman, and you have suggested increasing the size of CPA. If we were to accept all your suggested refinements, we would be moving, would we not, towards making the CPC some sort of a council of elders or council of statesmen or wisemen. If we were to do that, give them a greater security of tenure than given in the Bill, lengthen their terms so that it is not coterminous with whoever appointed them originally, then do you see that such a body could also perform the functions of the proposed Presidential Elections Committee? — (*Mr Edwin Pang*) Mr Chairman, Sir, as far as responsibilities pertaining to Presidential Elections are concerned, we feel that these should be left to the Presidential Elections Committee and the Election Judge. We feel that the Council of Presidential Advisors should continue in its role as Advisors. As for the statement that you made, Sir, that, if our proposals were to be accepted, this could lead to a council of elders, so to speak, we feel that this may not necessarily be a bad idea at all because anyway, in the first place, only

three members of the CPA will be given security of tenure. And if you were to refer to paragraph 4 of our proposal, we did suggest that the number of members in the Council be increased to 9. So there will be one-third of the Council that is actually having security of tenure, not the entire Council of Presidential Advisors. We think that there might be some merit in giving security of tenure to three of the members because we feel that having some permanent members in the Council of Presidential Advisors will lend a stabilizing effect to this rather new institution. It will also give continuity and, more importantly, the experience that these permanent members have will come in very useful. By virtue of the fact that they are around for a longer period of time, as compared to the rest of the CPA members, we feel that they will be more familiar with the challenges that are faced by the Council of Presidential Advisors. Hence, they will be in a better position to advise and guide the younger members who may be changed every three years. At the same time, these permanent members will also be in a position to give perhaps better advice to the President.

183. I have one more question to ask. It is related to your earlier observation that you are in support of pre-qualification, given the importance of the tasks, the functions of the Elected President. Several representors have urged upon us that, among the factors to be included in the pre-qualification, there should be a minimum age requirement. What are your views on this? — (*Mr Edwin Pang*) Mr Chairman, Sir, we feel that the minimum age perhaps should be the age for a Member of Parliament. We feel that the prerequisites are really not that stringent.

Mr Edwin Pang (cont.)

They do not really exclude anybody. Even if somebody is not on the list, as stated in the Bill, even if they do not automatically qualify to run for the Presidential Elections, we feel that the Bill does not really restrict anybody because the Presidential Elections Committee can still deem if a person is suitable or if he has the qualifications to run in the Presidential Elections.

Mr Chiam See Tong

184. Mr Pang, can I refer you to page 5 of your submission? In paragraph 6, you suggested that any enhancement of additional powers of the President must be supported by a national referendum of at least two-thirds majority. We have a Bill now before us giving additional powers to the President. Do you think that a referendum is needed for this Bill? — (*Mr Edwin Pang*) Mr Chairman, Sir, we feel that there is no necessity for a national referendum on the Bill at the moment. The Bill at present gives the President only custodial powers. However, we are of the opinion that if additional powers are to be given to the President, so much so that he becomes an Executive President, then we propose that a national referendum be held. Just as a national referendum is held if the powers of the President are to be curtailed, we feel that a national referendum should also be held if additional powers are to be given, so as to give the office of the President greater legitimacy and acceptance by the people. If such a change is to be made so that the President has Executive powers, we feel that this would be a rather major amendment to

the Constitution and the mandate of the people ought to be sought.

185. Your submission here is that the enhancement of powers only relates to the so-called Executive powers. If it is the additional custodial powers, there is no need for a two-thirds majority in the national referendum. Am I clear on that? — (*Mr Charan Singh*) What we mean is that the President now has more powers than was first proposed in 1988. At the moment, most of the powers are still custodial. However, we feel that the addition of greater custodial powers might one day lead to the President becoming an Executive President. This is to prevent such a scenario because by then it would be too late to take back the powers already given to him. We should not add more powers to him even if they are merely custodial before you seek a referendum of the people.

186. You are suggesting that for additional custodial powers to the present ones, as contained in the Bill, you need to have a referendum with a two-thirds majority. But now we are giving massive custodial powers to the President under this Bill, and you think that there is no need for a referendum, even for a simple majority in a referendum? — (*Mr Goh Keng Hock*) Mr Chairman, Sir, if I may supplement what my colleague has mentioned. Our aim is to hope that this suggestion may help to bring on board and help to accommodate as many people as possible so that we are ensured that whoever becomes a President will only have custodial powers and not Executive powers. This will also serve the purpose of giving people the supplementary assurance that he will only have custodial

functions and nothing more. Suppose he is to be given powers to initiate any policies or any authority to decide on certain important issues. Just as a government who may require a mandate to initiate any policies, I think we have to seek the people's approval on that. That is our stand.

187. But you have not stated in your submission that if Executive powers are to be given to the President, you need a referendum on that. But never mind. Do you still want to go on? - (*Mr Edwin Pang*) Yes, I would like to clarify the points that we made earlier. When we say that we would like to have a national referendum if new provisions pertaining to the enhancement of the President's powers are to be carried out, we are not saying that just because Executive powers are to be given, a national referendum should be held. I agree with my colleague, Mr Charan Singh, that if additional custodial powers, other than those stated in the Bill, are to be given, then a national referendum should also be held. We are already clear as to what custodial powers the President has at present because it is already stated in the Bill. What we are unsure about is what other custodial powers the President may have in the future. And because we are not sure what is going to come up in future, we propose that a national referendum be held so that there will be a check on the custodial powers, or Executive powers, that are to be given to the President in the future. That is why we came up with this proposal.

188. If I get you correctly, your Committee feels that enough is enough. You have already given the President enough

powers in this Bill and no more, and if he is going to have more powers for himself, make it difficult? (*Mr Edwin Pang*) No. That is not our implication at all. Whether the powers stated in this Bill are enough or not, is really not for my Club to determine. Additional powers may or may not be good for Singapore, for the people. But the point is if additional powers are to be given, so much so that there may be a possibility that we could end up having an Executive President, then, as we mentioned earlier, the mandate of the people ought to be sought so as to give the office of the President greater legitimacy and acceptance. That is why we propose that a two-thirds majority in a national referendum be required for any future provisions pertaining to the enhancement of the President's powers.

189. Can I go on to the next paragraph, paragraph 7? You said that the President should divest himself of all political connections once he assumes office. Can you give us your reasons or the dangers you see for saying so? - (*Mr Edwin Pang*) Mr Chairman, Sir, before I go on to the reasons, may I just have your permission to make an amendment to our Proposal No. 7 so that the proposal now reads:

"That the Elected President terminates any membership with political parties (if any) when he assumes office".

Chairman

190. Could you just read the old paragraph as amended? - (*Mr Edwin Pang*) The amended version of our proposal would be:

"That the Elected President terminates his membership with any political parties when he assumes office".

Mr Edwin Pang (cont.)

The reason we would like to give for coming up with this proposal is that the office of the Elected President ought to be seen as one that is impartial, that is above politics, in the sense that the national interests come first before party interests. In order for the office of the Elected President to have greater legitimacy and acceptance by the people, the office should be seen as one that is impartial where the holder of the office, namely the Elected President, exercises fair and sound judgement. And because of that, we feel that if the Elected President is a member of a political party, even if he is somebody who is impartial, even if he is somebody who exercises fair and sound judgement, his membership in the political party should still be terminated so that he could be seen as such by the public. *(Mr Charan Singh)* I would like to add that at yesterday's Select Committee hearing, there were some suggestions that these be confined to political convention that the President should observe in carrying out his functions. He should not let his political views influence him when he makes his decision. On behalf of the Club, I feel that this, in fact, should be contained in the Constitution itself in the sense that should the President be actively involved in politics, in siding one party over the other and not considering the national interests, this should serve as a form of disqualification or rather as a step to remove the President should he abuse his powers by involving himself directly in party politics.

Mr Chiam See Tong

191. Mr Charan Singh, what you are saying is that under the clause for the removal of the President, if the President gets involved in politics, it will be considered as one of the grounds for his removal. Am I correct? - *(Mr Charan Singh)* If he considers politics as a game to enhance his political image and to seek re-election, then I think he should be removed because then he would not be exercising his custodial powers and would merely be using the office for some other purpose. But where he uses his political discretion to exercise his political office in the interest of the nation, then that should not be the criteria to remove him. What is important is that he makes a decision in the nation's interest and not let some other factors detract him from that decision.

192. You are saying that if he uses his political motives for the nation, it is all right. I do not get what you have said? - *(Mr Charan Singh)* What I mean is that severing party membership itself will not remove the President from his own personal convictions. He has his own views as to what is right and what is wrong. However, he should not use this for the sake of putting forward the views of a certain political party. But he should use his convictions and his views in guiding him towards the nation's interests.

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193. What you are saying is that even after having divested himself of his political affiliations, the President must not still be involved in politics. Even if he is not a party member, but he is involved in politics, it will be a ground for his removal? — (*Mr Charan Singh*) Yes, if he uses it to abuse his office.

Chairman

194. Are there any more questions? If not, I would like to thank all of you for coming here this morning to assist the Committee. We will send you a transcript of today's proceedings for verification? — (*Witnesses*) Thank you, Mr Chairman.

(The witnesses withdrew.)

Paper No. 26-Mr Walter Woon of 78 Greenbridge Crescent, Singapore 2159, was examined.

Chairman

195. Good morning. Please be seated. For the record, could you state your name and address? - (*Mr Walter Woon*) I am Walter Woon. 78 Greenbridge Crescent, Singapore.

Chairman] Mr Woon, thank you for your written submission to the Select Committee and for coming here today to assist us. BG Lee.

BG Lee Hsien Loong

196. Mr Woon, can you explain your proposal that the President should be politically neutral? What do you have in mind? - (*Mr Walter Woon*) I do not think it is practical to have a President who is completely politically neutral. But I think we have to consider the possibility that in order for the President to be effective, we must try and eliminate all sources of bias or minimise them at the very least. My suggestion basically is that you should disqualify immediate past members of the Cabinet from being President, simply because of the possibility that an immediate past member of the Cabinet will have too close links to the Executive to exercise his powers effectively when called upon to do so.

197. What is your concern? Is it the presentation, that a person who has just been a Minister may be seen to be cooperating too closely with the Prime Minister when he becomes the Elected President? Or do you have a real concern that he may propose the wrong policies?

- (*Mr Walter Woon*) As far as I understand it, the President does not propose policies, but he is there as a check upon an irresponsible government. The only time I can conceive of the President really requiring to exercise his veto on the spending of reserves is where the Government of the day is trying to hand out things to the electorate in order to buy popularity. As I said in my representation, you do not have to hand out things when you have got an unassailable majority. You hand out things when you are trying to retain power where your majority is something that you could lose. In a situation like that, if you have a President who is an immediate past member of the Cabinet and the exercise of his veto will cause the fall of the government, will he exercise the veto? That is my concern. I think that even if the President is a man of unimpeachable integrity we should not put him to this kind of test.

198. In practice, of course, if you impose such a restriction, you would be severely restricting the supply of potential Presidential candidates? - (*Mr Walter Woon*) I beg to differ, General. I do not think Singapore is so bereft of people with sufficient integrity that if we disqualify people who have been members of the Cabinet for five years, we will be unduly restricting the pool. I am only suggesting five years because that is the normal life of a government. So you can have a retired Cabinet Minister come back in after five years as an Elected President.

199. You have also asked the President to resign from any political party before he gets nominated? - (*Mr Walter Woon*) Yes.

200. What is your consideration? - (*Mr Walter Woon*) Again, a token of good faith to show that he is serious about being politically neutral. Once you have a President who is perceived to be a tool of a political party. I think he forfeits a lot of credibility.

201. The Prime Minister belongs to a political party and indeed heads a political party. Does he therefore become less credible as a Prime Minister? - (*Mr Walter Woon*) The President is designed to be a check on the Prime Minister. The Prime Minister is clearly a party political man. And what he does may or may not be for the good of Singapore, and that is what the President is there to check. If the President is himself also a party political man and both of them are working hand in glove, then I think we will have a problem of credibility. I am not saying that it would be an actual problem because you may very well have a person who has a party political affiliation but is of unimpeachable integrity and will check the Prime Minister. But I think you will have a perception problem.

202. But the President does not depend on the Prime Minister for his livelihood. The Prime Minister did not nominate him. He was elected not by the Prime Minister's party in Parliament, but by the electorate at large, in a secret vote. And he has been sworn in to an office where he has certain responsibilities to uphold and it is his duty to see that his job is done? - (*Mr Walter Woon*) Would it be desirable for the President to be Secre-

tary-General of a political party for one thing? I do not think that that would be desirable at all.

203. Why not? You could make a contrary case. If the President wants to have a mandate, he must have a following. The legitimate way for him to get a following in a democracy is to organise a political party to mobilise support for his Presidency, so that he can do things which his followers and the population will support. That is how political parties are formed? - (*Mr Walter Woon*) I am not comfortable with that. General, for one reason. I think as far as is desirable, the President should be above party politics. And once he steps into this position, he should renounce his ties with the existing political parties for the same reason that I have suggested that Cabinet Ministers should not make a direct transition. It is a question of reducing the possibility of bias. In a sense, it is symbolic. A man who says, "I want to run for President" must say, "I am willing to forgo my party political ties. I am willing to do the right thing even if it is against my party affiliation. I am willing to go against my former colleagues if it is necessary to do so."

204. But, of course, it is just a symbolic gesture because turning in a membership card in no way necessarily changes his real sympathies? - (*Mr Walter Woon*) Yes, that is true. It may be symbolic, but I think it is necessary to establish that the President is actually serious about being neutral.

Mr Goh Chok Tong

205. Mr Woon in the Cabinet system, do the Ministers belong to the same

Mr Goh Chok Tong (cons.)

party generally? — *(Mr Walter Woon)*
Yes, I am sure they do.

206. Does the Minister for Finance not function that check and balance role on expenditure required by other Ministers? — *(Mr Walter Woon)* I am not quite sure I follow that, Mr Goh.

207. If the Minister for National Development wants more funds for his Ministry, does he always get his way? Or will not the Minister for Finance also impose a certain check on the request of the Minister for National Development? — *(Mr Walter Woon)* I think it depends entirely upon the type of Cabinet that you have. If you have a situation where the Minister for National Development wants funds to give away to the population and the Minister for Finance does not have the clout or the following or the influence in the Cabinet to stop him, I think he will get his own way.

208. No. Let us say that there is a limited budget available for the year and there are competing claims in the budget. Does the Minister for Finance not serve as the allocator or serve as a check on expenditure for the whole government? — *(Mr Walter Woon)* I suppose in the sense that he allocates the funds. I am not sure whether you could say it is a check. Because if there are funds to allocate, he can allocate for legitimate or illegitimate purposes.

209. Yes, allocation involves some checks because you are actually talking about the use of certain funds. But I am leading to the point whether two persons belonging to the same party would necessarily result in the perception that one

Minister is in cahoots with the other Minister? — *(Mr Walter Woon)* I think it would, yes.

210. If we follow your argument, it means that whatever a Minister wants to have, the Ministry of Finance would approve. But it does not follow in practice, because the Ministry of Finance would impose certain requirements on the demands of other Ministers? — *(Mr Walter Woon)* I am not sure how that really impacts on what I am saying. What I am saying in a case like this is that you are talking about an Elected President to function as a check on illegitimate spending of the reserves. Your Minister for Finance cannot be an effective check, because the Minister for Finance, although he allocates the amount available, if the amount available involves drawing down on the reserves, he provides no check at all on this. When I say that a person in the same political party is not an effective check, I am saying that in a situation where the President is called upon to exercise his veto, he might not exercise his veto if the result would mean the fall of the Government. And I do not think in that case we are being very well served.

211. Let me recast the question. As the Minister for National Development, your concern is not about revenue. Your concern is about building roads, infrastructure, for the country. And you will just ask for funds from the Ministry of Finance, is it not? — *(Mr Walter Woon)* I assume that is so.

212. Right. If the Minister for National Development is appointed as a Minister for Finance, does his role not change? Would he still think like a Minis-

ter for National Development or now would he think differently? - (*Mr Walter Woon*) There again, it depends entirely upon the individual.

213. No. I think the post requires him to think differently because he is now in charge of funds. He is not in charge of building roads? — (*Mr Walter Woon*) Correct me if I am wrong, Mr Goh. You are saying that the person we appoint as President is going to grow in the role notwithstanding his party political affiliations.

214. The point I am making is when a person changes his position, his role changes. His attitude towards that position also changes. So if a Minister becomes an Elected President, he will function as an Elected President. He will not function as a Minister? - (*Mr Walter Woon*) Can you guarantee that for the next 25 years, Mr Goh? In a sense, we are talking about a situation that exists today where we have got a stable government, a government of admitted integrity. But we do not know what we will have 25 years down the road. The way that these amendments are being cast, it will not be possible to change them because of the entrenchment provision. So what we do now is going to bind us for many years down the road. So I am saying that if we can reduce bias, we should reduce bias.

215. I am following up on the point made by my colleague over here that one can make a strong case that the Elected President need not be a non-political figure, that he need not have to resign from a political party. In other words, if you are an Elected President, you have a very clear role to play and that man must play that role accordingly. Otherwise, he

will not be behaving like a President. Take the case of the Minister. If he becomes the Prime Minister, does he not perform as a Prime Minister or will he still perform just as a Minister? - (*Mr Walter Woon*) Again, as I said, it depends entirely on the individual. If I may draw an analogy to a commercial situation. We take great pains to ensure that in a commercial situation like a company, the people who audit the company are not biased. There is no conflict of interest. In fact, the Companies Act requires that the auditor of a company cannot be an officer of the company nor a past officer for 12 months. We go to this extent to ensure that in companies the people who audit are independent and do not have this potential conflict of interest. When we are talking about the Elected President who is far more important than the auditor of a company, I do not see why we should be so reluctant to build in these checks against bias.

216. But the auditors and the accountants can still belong to the same society of accountants? — (*Mr Walter Woon*) The question is not whether they are members of the Society of Accountants or not. I am saying that in the case of the auditor, he is not a member of management nor can he be a past member of management within the past 12 months. The idea of that is to ensure that if you are an auditor, you function as a check on management. You ensure that management does not breach the rules that have been laid down about spending. If the auditor happens to be part of the management, then the chances are that there may be a bias and he may not function adequately. I am not saying that the Elected President, if he is a party

Mr Walter Woon (cont.)

political man, will not function adequately. What I am saying is that there is a greater chance, if he is a party political man, that he will not function adequately. Again, like I said, we are not thinking in terms of Singapore now. But let us suppose in a worst case scenario in, say, 10 years time. There is a change of government. You get a group of disparate people who are in power only because they oppose the PAP, not because they have any rational platform themselves. The Elected President is elected from this group on the crest of that wave or that backlash against the PAP. You have a situation where to cling to power, the government of the day proposes to spend the reserves illegitimately. The Elected President who comes from this very same group, he has a choice, veto the proposal which would cause a political ruckus and probably ensure the fall of the government or he keeps quiet. In a situation like this, I think that we are asking too much of the President. If he does not exercise the veto, can we assume that he has done so in good faith? Or is there a chance that he has done so to keep his friends in power? And I think that in a situation like that, there will always be a suspicion that the failure to exercise the veto will have been for party political reasons and not for the good of Singapore as a whole.

BG Lee Hsien Loong

217. Mr Woon, can I put to you a scenario to consider, which is slightly different from what you have presented? The Prime Minister and his government want to spend money. He wants to build a new airport. He wants a new MRT. He

needs \$5 billion from the reserves. The President says no. On grounds of principle, they have a disagreement. The Prime Minister considers himself as having a mandate because he was elected by the people and he wants to act for the good of the people. This is all entirely above board, a genuine difference of views. What is a legitimate way for the Prime Minister to get his will to prevail? Because he is entitled to try to get his will to prevail? - *(Mr Walter Woon)* There is an override provision built into the Constitution that where the President exercises the veto for expenditure -

218. He may not succeed because the Council of Presidential Advisors may concur with the President. The veto is final. So what can he do? - *(Mr Walter Woon)* Under the situation, the only thing he can try to do is to remove the President.

219. Yes. That could take place when the President's six year term comes to an end, and a new President is due to be elected. This \$5 billion project must become a political issue, must it not? - *(Mr Walter Woon)* Yes.

220. It has to be. So we have two candidates for the post. Surely, a very natural question for the voters to want to know before choosing between them is: are you going to approve this \$5 billion project or not? — *(Mr Walter Woon)* Yes.

221. One says, "Yes", but the other says, "No". Who do you think is going to be voting and rooting and campaigning for the person who is going to approve the project? — *(Mr Walter Woon)* Obviously the Government of the day.

222. The Prime Minister and his political party. The man resigns from the relevant party. He becomes elected as Elected President. Is he not a political figure already? — (*Mr Walter Woon*) I think we may have shifted slightly from what we were talking about. In my paper, I actually made a distinction between, first, the chance that your President is not going to be effective, and I was dealing with that first. Secondly, the problem, what happens when the President and the Prime Minister clash when he is actually using his power.

223. No, no. I am pointing out that in such a scenario the President has been elected on a platform which is highly politicised, and he has a legitimate mandate at that point to approve the budget and to spend the money. And that is right and proper? — (*Mr Walter Woon*) Yes, but that is because in that particular scenario that you postulated, it has in fact become an issue. You are assuming that it will become a political issue when the President steps down. What I am saying is, what happens if the President's term coincides with that of the Government? He does not step down until after the Government goes. He has got six years, the Government has got 5 years. In the meantime, the Government spends merrily for 5 whole years.

224. How can the Government do that? — (*Mr Walter Woon*) I am sorry to drag you back to the scenario I postulated. You have got a situation where you have an irresponsible Government and you have got a President elected at the same time. He has got a 6-year term, the Government has got a 5-year term. During those five years, they can spend

merrily with no check because the President —

225. Yes, all right. So it would be ideal if the terms could be staggered. We may not be able to contrive it all the time, but it would be preferable? — (*Mr Walter Woon*) My point is not about staggering the terms. My point is about whether or not you can trust this particular man, if he has got very close ties with the Government to actually exercise his veto powers.

226. No. I am putting it to you that if the President was elected by the population of Singapore on the express understanding that he is a party political person and he intends to take a political line, then he is fully entitled to do so, and he has the mandate, and that is the will of the people? — (*Mr Walter Woon*) I think perhaps we have a basic disagreement here, Minister, because you consider that the President should be a party political man, whereas I think that it is desirable that he should not be a party political man. The reason I say this is that even the PAP in the best years can command only about 6 to 7 out of 10 of the voters in Singapore, ie, 70%. That is already very good. That means the 30% who are against the PAP also may be against the President. The President is not just any other politician. He is the focus of a Singaporean's loyalty as Head of State. Are you going to alienate 30%? I do not think it is desirable.

227. So you would propose presidential elections minus politics? — (*Mr Walter Woon*) I would say that is the ideal if that can happen.

228. Do you think it will happen? — (*Mr Walter Woon*) No, I do not think so.

Mr Walter Woon (cont.)

I am realistic enough to assume that it will not. But I am saying that in a situation where we can reduce the political element, we should reduce the political element. I am asking for no more than that.

Mr Goh Chok Tong

229. One more question. Mr Lee Kuan Yew has said that he would not be standing as the first Elected President. Let us assume that he in fact stands as a candidate for the first Elected Presidency, and he is elected. He resigns from the PAP. Is he a political figure or is he a non-political figure? — (*Mr Walter Woon*) We are using actually an extreme case.

230. No, it is an actual case? - (*Mr Walter Woon*) No, I am serious down here.

231. But it is a fact. Let us say we persuaded him to stand for election. Is he a political figure or is he a non-political figure, or even after five years break? - (*Mr Walter Woon*) To argue from the fact that Mr Lee may or may not be a good President, I think, is not legitimate.

232. No, no. I am not asking you that? — (*Mr Walter Woon*) Because what we are doing is, we are saying that we have got a good candidate now, and therefore we do not need to do anything about this.

233. No. I am suggesting a man like Mr Lee. Let us say that he leaves the party for a good five years, as you have recommended. Would the electorate regard him as a non-political figure when he becomes the second Elected President, or would they still regard him as a political figure? — (*Mr Walter Woon*) No, I think by that time he would be depoliticised to a large extent. He would be regarded as an elder statesman. But my point basically is that the fact that you may have a candidate -

234. Thank you. I have heard your answer? - (*Mr Walter Woon*) Yes.

Chairman

235. Are there any more questions? If not, thank you, Mr Woon, for coming here to assist us. We will send you a transcript of the proceedings for verification purposes? — (*Mr Walter Woon*) Thank you.

(The witness withdrew.)

Paper 28 - Assoc. Prof. Valentine S. Winslow, do Faculty of Law, National University of Singapore, 10 Kent Ridge Crescent, Singapore 0511, was examined.

Chairman

236. Good afternoon. Please be seated. For the record, could you state your name and address? - (*Assoc. Prof. Valentine S Winslow*) I am Valentine Selvam Winslow, living at 35 Greenview Crescent, Singapore 1128.

237. Thank you very much for your written submission and coming here today to assist us? - (*Assoc. Prof. Winslow*) Thank you.

Prof. Jayakumar

238. Mr Winslow, we will not be able to cover all the points you have raised today. For example, your suggestion that the grounds for removal should be included, I think, is a good one which we will consider. You have said that you support the concept of the Elected President? - (*Assoc. Prof. Winslow*) Yes.

239. Do I take it that you support also the additional roles which are envisaged for the Elected President on ISA, Religious Harmony and CPIB? - (*Assoc. Prof. Winslow*) Yes, as envisaged by the second White Paper. In fact, I think that is an improvement. There is definitely a role for the President with these powers. As I said, as an alternative to having judicial review, this is the next best thing. So I have no objection to that. I am particularly and pleasantly surprised that he also has the power to refuse to issue a Proclamation of Emergency under Article 150. That is a very powerful discretionary power and I think a useful one.

240. Yesterday, we heard a proposal for an additional item to be included in the entrenchment provisions which will require the Elected President's consent. It was suggested to us that an unscrupulous government might want to stay on in power indefinitely by amending the provisions on the length of term of Parliament, which is Article 65 and amending Article 66, which provisions require elections to be held within a certain period after the dissolution of Parliament. Do you see merit in that proposal? - (*Assoc. Prof. Winslow*) I think there is merit in that. Unless there is a period of emergency, there is no reason for elections not to be held after the term of office of that government is up. That is how I feel.

241. Can I now take you to your comments on the criteria for election of Elected President? You have made a two-fold suggestion here. On the one hand, you would like to see the criteria broadened. You have said that we should not exclude others who may have the moral fibre and capability. So obviously you envisage that the persons who aspire for the post of Elected President must have the moral fibre to stand up and speak up when they feel some proposals from the elected Government are wrong and bad for the nation, and they must have the capability. I think we will consider your points about broadening the criteria. But, on the other hand, you have also said that you would prefer to keep the qualifications the same as that for Members of Parliament. So can you clar-

Prof. Jayakumar (cont.)

ify whether you are in favour of pre-qualification, which is the approach in the Bill, or you are against pre-qualification? — (*Assoc. Prof. Winslow*) I am in favour of some pre-qualifications, as I mentioned in my paper, to the extent of having a minimum age for the President, 35 or 40 years. 35 will be all right, because in Singapore people tend to peak in their careers quite early. So 35 would be a reasonable minimum age. Apart from that, he should be qualified to be a Member of Parliament. I think that would be sufficient to ensure that you have enough talented people in the pool from whom candidates can come. I think the rest could be left to the electorate.

242. How do we ensure that you indeed have candidates who have the moral fibre and capability that you yourself consider to be important? — (*Assoc. Prof. Winslow*) I am still in favour of the electorate being allowed to judge, provided they know enough of the bio-data of each candidate. The problem about an Elections Committee, as envisaged in the Bill, is that we do not know what the qualifications are of the members of that Committee. They are not a constitutional Committee. Had they also been set up as a constitutional body, like the Council of Presidential Advisors, then it would be much clearer. But at the moment, without knowing who the members of that Committee should be, I would prefer not to have too much of a subjective element in leaving them to decide whether a person has the requisite qualifications and experience because that means you are turning that Elections Committee into some kind of electoral

college from whom a few candidates would emerge. They should not have such a broad power. In a democratic system, I think we should not diminish the right of equal opportunity of candidature too much. We want to ensure that we have good people, but we should not narrow it down so much that there can be only 20 or 30 people in the whole of Singapore who could qualify.

243. You have watched or read the proceedings which took place yesterday? — (*Assoc. Prof. Winslow*) Yes.

244. You would be aware that many others argued that because the Elected President is performing such crucial roles, he would need a minimum amount of special experience and qualification and that therefore there should be these pre-qualifications procedure. You are not in agreement with it? — (*Assoc. Prof. Winslow*) Basically, no.

245. I have one more question. What are your comments on the approach taken in the Bill on succession in cases of death, illness or absence of the Elected President? — (*Assoc. Prof. Winslow*) You mean who should be the Acting President?

246. Yes? — (*Assoc. Prof. Winslow*) For a start, I do not feel it is necessary to have a Vice-President because he could be a lame duck Vice-President with very little to do. Only if you have an Executive Presidency would it be necessary to have a Vice-President. In this case, it is all right just to have a President. However, I have misgivings about the Chief Justice being involved as a potential Acting President, for two reasons. One, he might be involved in the removal of the existing

President because he will have to appoint a tribunal of five judges. Secondly, we do not want to involve the Chief Justice in the political arena because I see the President, as envisaged, as being a political animal because he is elected, and he will not be a purely constitutional President. Therefore, if the Chief Justice were to be involved in having to collide with the Cabinet, that would be a situation which ought to have been avoided. So I would rather see that that does not happen.

247. Arising from what you have said, you obviously envisage the President to be a political animal. I think that is a very important observation. Do you therefore share the views of other representatives who have taken the view that the President ought not to be a political animal and he should sever all links with political parties? — (*Assoc Prof Winslow*) Basically, I think that it would be an acceptable viewpoint. To say that he should never have been a Minister or MP, is perhaps going too far. He could have been a former Minister or MP. However, there is merit in the suggestion that he should resign from the political party that he may be a member of when he offers himself as a candidate; for this reason, we are looking for a President who will be a man of stature, a person who has experience and qualifications, a sufficiently distinguished person to be able to speak on equal terms with the Prime Minister. Therefore, a person who is an ex-politician has that political acumen which may be of merit, and therefore we should not rule out former Ministers or MPs. However, there is merit in saying that he should divest himself of party membership when he

stands, because if a person stands on a party ticket for the Presidency, that would overshadow his standing as an individual. When a President is standing, he is being elected as an individual of stature and not because he is a member of a party. And members of the electorate, when they go to cast their vote, may simply say, "Oh. He belongs to this party. Okay. Vote for the party." That is not the point. You are supposed to vote for an individual who is able to exercise his discretionary powers, and therefore you cloud the issues when he stands for a party.

248. But the electorate, when they go to vote, it is necessary for them to know his political philosophy, his political views and attitudes, would it not? — (*Assoc Prof Winslow*) Yes, it would be necessary. I do not see any objection in that.

249. Not only his past attitudes, but what is his political philosophy on government, on the spending of reserves, on how to maintain integrity in the public service. All these will be important factors for voters to know? — (*Assoc Prof Winslow*) Yes. He would have a personal, I would say, manifesto of his own. It is entirely personal. He would not be following the party manifesto. So when he resigns from any political membership, he will be in that sense technically neutral. He may have sympathies with the party, but he is technically neutral to exercise his own discretion. He will not be following the party's political philosophy. I think that is important. The only problem I see in this is, if a person stands as an individual candidate not representing a party, there may be

Assoc. Prof. Winslow (cont.)

problems in funding his election, because when a person stands for election, the whole country is his constituency. He is not standing in one constituency. So it is going to be considerably expensive standing for elections and, therefore, maybe provision would have to be made for some reasonable minimum amount of disbursements being provided for all electoral candidates for the Presidency, because they cannot expect to get any money from a party.

Prof. Jayakumar (cont.)

250. Is it realistic, Mr Winslow? You have said that the Elected President would be a political animal. You have agreed with me that the voters need to know not only his past political philosophy and his approach to good government, they also need to know his present and future political thoughts. Third, you have agreed that he can declare what his personal political manifesto may be. From what you have said, I take it you agree that a candidate who stands for elections, while resigning from the party, which you want him to do, may declare that his political manifesto is going to be the same as Party A. There will be no objections to that? - (*Assoc Prof Winslow*) I suppose I do not have any objections to that. It is for the electorate to judge whether that would be a plus factor or a minus factor.

251. If that is so, then why not we allow him to say, "My political philosophy for the past 10 years has been that of the PAP or the SDP. I am not going to change. I think that is good for the

country, and I do not see any reason to resign, and I am going to continue." He is honest with the electorate. The electorate know exactly what his position is. He has not hidden anything. So why do we go through this motion of having to require him to resign? What purpose does it serve? - (*Assoc Prof Winslow*) When he resigns, as I said, it would make him technically neutral, free to follow his own path.

252. But you have conceded that he needs to tell the people what his political philosophy may be, and his political philosophy may not be an abstract statement of a list of do's and don'ts. You have agreed that he can say that he has this political philosophy which may coincide on all fours with the existing political party? - (*Assoc Prof Winslow*) Yes, that may be. May I suggest we look at perhaps an example in the Sri Lankan Constitution. Not that that it is very meritorious, but there is provision in the Sri Lankan Constitution for a Presidential candidate to be nominated by either an elector or a political party. So there is no objection, in my view, to having him nominated by a political party. But he should not be actually flying a party's colours when he is standing for election, because you are really voting for the individual and not the party.

253. But to use your phrase, his personal, individual political manifesto could be the same as the party which had nominated him, following from what you have said? - (*Assoc Prof Winslow*) Yes. When full disclosure is made to the electorate, I think that is the essence of democracy. If the electorate know that he is being honest with them, they can treat

that as a plus factor or a minus factor. It is entirely up to them.

254. In a sense, would you agree that there is an analogy between what we are discussing and the office of Speaker. The Speaker, when he performs the functions of a Speaker in Parliament, has to be neutral. Do you agree with that? - (*Assoc Prof Winslow*) Yes.

255. And he has to be seen to be neutral - the way he controls the debates, moderates unruly behaviour by either side or intemperate speeches or breaches of the Standing Orders. He has to be neutral. But for years in Singapore, we have had instances where the Speakers were not members of a political party. But for most of the time, you will recall that the Speaker has come from the ranks of the party. But we do not ask the person who is appointed as Speaker to resign from the political party. There is no provision in the Constitution. You are aware of it? - (*Assoc Prof Winslow*) I am aware, yes. But by parliamentary convention, he will not vote with the Government.

256. No. The previous Speaker, Dr Yeoh Ghim Seng, had voted on constitutional amendments. The point that I am making is the absence of the requirement that an MP from the ruling party who becomes the Speaker must sever his links from the political party. In your view and in your observation, has it seriously curtailed the concept of a Speaker who is objective and neutral? Has it? - (*Assoc Prof Winslow*) I am not sure that it has seriously affected the situation. No.

Prof. Jayakumar] Thank you.

Mr Davinder Singh

257. As I see it, the debate is one of form and substance. You agree that a person who wishes to stand for election as an Elected President can be from a political party. You agree with that? - (*Assoc Prof Winslow*) I feel that he could come from a political party but it might be helpful if he were to stand not as a party candidate but stand in his own right as an individual.

258. But he can at the time of elections have had in the past a political affiliation with the party. He can also for the purposes of that election adopt a manifesto which is consistent with the manifesto of that party, except, in your view, he should not use the party name or logo in espousing that manifesto? - (*Assoc Prof Winslow*) Yes.

259. And also in your view, while he can come from a political party and adopt its manifesto, he should not carry a card linking him with that party. Do you believe that these two disqualifications, ie, a severance of former ties and the inability to use the party name, would affect his effectiveness in office in his decision-making process? Let me put it in another way. Would not his effectiveness be influenced by his convictions and his character more than the card that he carries in the name that he contests under? - (*Assoc Prof Winslow*) Yes. I do not think his personal convictions would change, whether he is a member or he has divested himself of his party membership. However, he must be seen by the electorate as his own man, not a party man. This is very different from the United States because in the United States, you could have a President who

Assoc. Prof. Winslow (cont.)

belongs to the same party as the majority party in the legislature. But then the Cabinet does not come from the legislature in the United States and there is no party Whip system. The legislature can vote any way they like and they do not have to support the President, even if they come from the same party, the majority in the legislature. You have a Democratic President. You could be having a clash between a Democratic President and a Democratic majority legislature. But in Singapore, with the party Whip system, anyone who belongs to that party will be seen as having the same party view and that he will no longer be independent. If the electorate believe that, then they are not going to vote for a President because he belongs to that party which is the same party as the party in government, because they may feel that he will not play the custodial role. So it is a perception in the minds of the electorate.

Mr Davinder Singh (cont.)

260. And therein in fact lies the check. You have in fact suggested the answer. Because if the perception at election time is that he is actually a party man, they will not vote for him, in your view, or there is a risk or chance that they won't? — (*Assoc Prof Winslow*) Yes.

261. And that is the check, isn't it? Because, to use your words, the essence of democracy is full disclosure. If during the elections, he discloses his interest and the fact that he comes from a party, then let the electorate decide whether in fact they want a party man or not. But if they

decide that they want him, then in accordance with the decision of the electorate, he should be our Elected President? — (*Assoc Prof Winslow*) Yes. And I hope I am being consistent with myself when I said earlier that there should be no special qualifications for the candidate, apart from perhaps age, and being qualified to be an MP, and let the electorate decide. Similarly, there should be no special qualifications as to his affiliation to parties. Let the electorate again decide, whether he has been a member of a party or not.

262. Whether you go through the pre-qualification process or not, at election times, if you disclose that in fact you are a member of the party, it is for the electorate to decide whether they want you as an Elected President, because they know of your affiliation. And therein lies the check? — (*Assoc Prof Winslow*) Yes. I suppose so.

263. So the fact that you are a party man does not really make a difference because the final say is with the electorate? — (*Assoc Prof Winslow*) That is right.

Mr Abdullah Tarmugi

264. Prof Winslow, you did mention earlier that it would be too much to ask a Presidential candidate not to be a former Minister or a former MP. You did say that? — (*Assoc Prof Winslow*) Yes.

265. There was a view from a previous representor who said that a former Minister ought not to be a Presidential candidate because of the possibility of collusion between the former Minister, if he becomes a President, and the party

from which he came and was a former Minister. So what is your response to that? — (*Assoc Prof Winslow*) My response to that is we should not rule out so many people. My basic philosophy is in line with democratic principle, generally, that we should not be ruling out people. If a person has ceased to be a Minister, and perhaps even ceased to be a member of the party, there is no reason why he should not stand.

266. In other words, you do not want to see any possible collusion, or collusion as a problem? — (*Assoc Prof Winslow*) The problem will only be the perception in the minds of the electorate. If they see that they cannot trust the President to play a custodial role, then they may not vote for him. But if they are happy with the way things are going with the Government and they think the President should in fact work in cooperation with the Government, that is up to them, and so be it.

Mr Chiam See Tong

267. Prof Winslow, in paragraph 1.2, you said that the present Bill, in reference to the President, is a scheme as a whole and you described it as a "two-headed executive". Later on you said that the President has certainly become a partly Executive President. The Bill says that the President has only blocking or custodial powers. Why do you describe him now as having an executive role to play? — (*Assoc Prof Winslow*) I said he is a partly Executive President because under the Westminster constitutional system, he is a purely constitutional Head of State and he has no discretionary powers, except for the two powers which are

absolutely essential for transitional purposes between the governments, ie, the power in the appointment of the Prime Minister and the ability to refuse a dissolution of Parliament. That is the same as the Queen has in England. Those two powers alone do not make a person an Executive President. Having these veto powers on the appointments to the various public services, and there are quite a number of them, he can really be a thorn in the flesh of the Government, if he exercises this power frequently. Similarly with the reserves, especially if not much time has passed since the new Government has come in to accumulate much money during their term of office, they may have to dig into the reserves if they want to build something like the MRT. Then their hands are going to be tied, so this is a veto power. A veto power is an Executive power, although it is a negative power and not a positive one. He is only there to block, and not to take the initiative. If I may use another analogy to the football analogy, I would say instead of having a passenger in the seat to navigate, which is the present President, there will be another person, like a driving instructor, sitting there, who has his hand on the handbrake. So when the Prime Minister is driving, putting his foot on the accelerator, the person sitting in the passenger seat may pull the handbrake. That means he is also in control. The driver is no longer in total control. It is the person next to him who has partial control, although he does not have any foot on the accelerator. He has only his hand on the handbrake and that is enough for him to deprive the driver of total control. That means he has partly Executive power.

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Mr Chiam See Tong (cont.)

Chairman

268. In fact, the Government of the day will be sharing powers with the Elected President? - (*Assoc Prof Winslow*) That is right. I believe so.

269. Prof Winslow, may I, on behalf of the Committee, thank you once again for coming here this morning to assist us. We will send you a transcript of today's proceedings for verification purposes? - (*Assoc Prof Winslow*) Thank you.

(The witness withdrew.)

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Paper 13 - Mr Wee Han Kim of 1, Sophia Road #10-01, Singapore 0922, was examined.

Chairman

270. Good afternoon. Please be seated? — (*Mr Wee Han Kim*) Mr Chairman, Members of the Select Committee, good afternoon. Before we start, may I make a special request that my wife be admitted to this room.

271. For what purpose, please? - (*Mr Wee Han Kim*) It is an individual submission and perhaps I deserve some moral support.

272. The Committee has made a decision only to admit representors and the media. We have just extended the invitation to you so we would not be able to admit your wife? - (*Mr Wee Han Kim*) Very well.

Chairman] First of all, thank you for your written submission and for coming here today to assist us. Mr Singh, you may proceed.

Mr Davinder Singh

273. Mr Wee, may I refer to your supplemental representation dated 29th October. Would you be good enough to read that representation? — (*Mr Wee Han Kim*) I am afraid I have not brought my specs. Would you mind asking someone else to read it?

274. Mr Wee, may I summarise the gist of your representation and you will correct me if I am wrong? - (*Mr Wee Han Kim*) Certainly.

275. In your submission, you suggest that if the Elected President is to be

immune from legal proceedings, then as a quid pro quo, he should also be restrained from commencing legal proceedings, but, however limited to legal proceedings against political opponents of his party. According to your representation, the rationale for that is that since he has a say in the appointment of judges, some of these judges, who are ultimately approved and appointed, may feel that they are in some way obliged, grateful, indebted or beholden to him for their appointment. Would you like to elaborate on that submission? - (*Mr Wee Han Kim*) We have seen the awful spectre of the Prime Minister pursuing Mr Jeyaretnam through the Courts. Should Mr Lee become the Elected President and should he continue his pursuit with ever mounting damages and even higher costs, I think that would be a sad day for Singapore.

276. Have you got any objections to the Constitution as it is presently crafted in relation to the rights of parties to bring suit? — (*Mr Wee Han Kim*) I have not really considered this point very deeply. I would not like to comment on that.

277. Which aspect have you not considered deeply? - (*Mr Wee Han Kim*) I looked through the Bill and this point about immunity from suit occurred to me. So I wrote my submission. I suppose leaders of State and the President do have some immunity, but I am no expert on that line.

278. As things stand now, does any person have any restraint under the Con-

Mr Davinder Singh (cont.)

stitution to bring legal proceedings in defence of his right? — (*Mr Wee Han Kim*) Well, I do not know. But this is a very special Constitution. You can craft it how you like.

279. As it presently stands? - (*Mr Wee Han Kim*) I do not know. I am not a constitutional expert. I just have an interest.

280. The procedure for appointing judges today is this. The President appoints them on the advice of the Prime Minister and that would involve the Prime Minister in their appointments, would it not? You will agree with that? (*Mr Wee Han Kim*) Obviously.

281. That being the case, it is not your suggestion, is it, that as the Constitution now stands, the Prime Minister should be restrained from bringing legal proceedings against political parties or political opponents? — (*Mr Wee Han Kim*) We are dealing with the Elected President.

282. The reason why I draw your attention to that is that your rationale for that amendment is that the Elected President would have a say in the appointment of judges. Similarly today, the Prime Minister has a say in the appointment of judges. So if your amendment were to hold good, then that rationale must apply similarly to today's position? — (*Mr Wee Han Kim*) I do not think the present system of appointment of judges is a good one. I think they should be appointed by a Commission as proposed by the 1966 Constitutional Commission.

283. As things now stand, under the law, the Prime Minister is involved in the appointment of judges? - (*Mr Wee Han Kim*) I think he is more than involved in the appointment of judges. That is my belief.

284. Would you like to elaborate on that? — (*Mr Wee Han Kim*) He practically has the say, in practice.

285. In so far as the appointment of judges is concerned, the President acts on his advice? - (*Mr Wee Han Kim*) That is the theory, but what really happens? We are concerned with the facts. You can have any theory you like. But what is your belief, perception and understanding of the real situation?

286. Would you suggest, therefore, from those facts that there will be a restraint on his right to bring legal proceedings? - (*Mr Wee Han Kim*) It is only a suggestion. Somebody has to work on it and see whether it makes sense or not. This idea just occurs to me. I do not spend all my time drawing up the Singapore Constitution. If it occurs to me when I have a look at it, I will make a suggestion if I think it is something that I want to say.

287. But you have not suggested prior to this nor do you suggest today that there should be a restraint on the Prime Minister's right to bring those proceedings? - (*Mr Wee Han Kim*) Now we are dealing with the Elected President. I have not considered it.

288. If that is the case and you have not suggested it, then why should the Elected President be under a special disability from bringing legal proceed-

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ings? — (*Mr Wee Han Kim*) I repeat what I have said at the beginning.

289. Which is? - (*Mr Wee Han Kim*) I have already stated it. You can look up the record. I do not want to repeat myself again unnecessarily. It is in my opening statement.

Prof. Jayakumar

290. Mr Wee, do you agree that every individual should have a right to legal recourse if his character has been defamed? — (*Mr Wee Han Kim*) It depends on the individual.

291. Do you agree, as a matter of principle, that a person should have the right? — (*Mr Wee Han Kim*) Yes.

292. Thank you. Now I turn to a different point. In page 2, on clause 18, you said:

"Clause 18 seems to imply that the President shall be a man. It should be amended to make clear that women are not barred from this office."

Mr Wee, you are a lawyer? - (*Mr Wee Han Kim*) Supposed to be.

293. Are you a practising lawyer? - (*Mr Wee Han Kim*) I suppose so, yes.

294. Do you know whether you are a practising lawyer or not? - (*Mr Wee Han Kim*) I should know. Do you know?

Prof. Jayakumar] I am asking you a question: Are you a practising lawyer?

Chairman

295. I would suggest to the witness that he should answer the questions put forward by the Members of the panel instead of giving evasive answers? - (*Mr Wee Han Kim*) If you ask me whether I am here, I do not have to answer. With

all due respect, Mr Chairman, I do not have to answer the obvious.

Prof. Jayakumar] Mr Chairman, I would like to raise a point of order.

Chairman

296. The Committee has requested you here today specifically to answer questions put forward by the Committee and I suggest that you answer the questions. It is incorrect for you to say that you have a choice not to answer the questions. You are precisely here for the purpose of answering questions put to you? - (*Mr Wee Han Kim*) There may be some questions which I cannot answer -

297. If you cannot answer, you may say so that you cannot answer? - (*Mr Wee Han Kim*) - in which case I believe I have a right to keep my mouth shut.

Prof. Jayakumar

298. My question is: Are you a practising lawyer? — (*Mr Wee Han Kim*) Is there anybody who knows the answer? I suppose so. Y-e-s. Read my lips.

Chairman] It appears that the witness does not know what he is doing.

Prof. Jayakumar

299. Mr Chairman, I think the witness is impertinent, and he does not even know whether he is a practising lawyer. As a practising lawyer, do you know that the Interpretation Act has a provision which says that words of any written law importing the masculine gender include females? - (*Mr Wee Han Kim*) I believe that I must have come across that in my

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Mr Wee Han Kim (cont.)

long years of practice. But I think it should be made clear in this Elected Presidency Bill. It is a very special Bill. It just says "he", "he", "he" and it occurs to me that it was designed for a man. I may be wrong, but correct me if I am wrong.

Prof. Jayakumar (cont.)

300. Obviously, you are wrong because of the Interpretation Act? —

(Mr Wee Han Kim) Thank you for the correction.

Chairman

301. Are there any more questions? If not, the witness is now discharged. We will send you a transcript of today's proceedings for your verification. Thank you very much? - *(Mr Wee Han Kim)* There are one or two things -

302. We have no more questions for you? - *(Mr Wee Han Kim)* Thank you.

(The witness withdrew.)

Chairman] We have now heard all the representors and the Committee will adjourn to a date to be fixed.

Committee adjourned at 12.45 p.m.
to a date to be fixed.

MINUTES OF PROCEEDINGS

1st Meeting

TUESDAY, 6TH NOVEMBER, 1990
2.30 p.m.

PRESENT:

Mr Speaker (Mr Tan Soo Khoo) (*in the Chair*).

Dr Abdullah Tarmugi.

Mr S. Chandra Das.

Mr Chiam See Tong.

Mr Davinder Singh.

Mr Goh Chok Tong.

BG Lee Hsien Loong.

Dr Ong Chit Chung.

Dr Ow Chin Hock.

BG George Yong-Boon Yeo

ABSENT:

Mr S. Dhanabalan (*on leave of absence*).

Prof S. Jayakumar (*with apologies*).

1. The Committee deliberated.
2. Written representations received were considered.
3. Agreed that the following representors be invited to give oral evidence in public:
 - (1) Mr Shriniwas Rai (Paper 9);
 - (2) Mr Kenneth Chew (Paper 10);
 - (3) Mr Vincent Tay Shian Poh (Paper 12);
 - (4) Mr Wee Han Kim (Paper 13);
 - (5) National University of Singapore Law Club (Paper 21);

- (6) National University of Singapore Democratic Socialist Club (Paper 24);
- (7) Mr Walter Woon (Paper 26);
- (8) Institute of Certified Public Accountants of Singapore (Paper 27);
- (9) Associate Professor Valentine S Winslow (Paper 28); and
- (10) The Law Society of Singapore (Paper 31).

4. Agreed that strangers be admitted to the hearings for the purpose of television and other media coverage.

5. Agreed that officials from the Attorney-General's Chambers and the Ministry of Finance and the Auditor-General be admitted to meetings of the Committee.

6. Agreed that the Committee do meet again on Wednesday, 14th and Thursday, 15th November, 1990 at 10.30 a.m, to hear oral evidence in public.

Adjourned till 10.30 a.m. on
Wednesday, 14th November 1990.

2nd Meeting

WEDNESDAY, 14TH NOVEMBER, 1990

10.30 a.m.

PRESENT:

Mr Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi.

Mr S. Chandra Das.

Mr Chiam See Tong.

Mr Davinder Singh.

Mr Goh Chok Tong.

Prof. S. Jayakumar.

BG Lee Hsien Loong.

Dr Ong Chit Chung.

Dr Ow Chin Hock.

BG George Yong-Boon Yeo.

ABSENT:

Mr S. Dhanabalan. (*on leave of absence*).

In Attendance

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

Ms Tan Peck Cheng, Deputy Senior State Counsel.

Mrs Owi Beng Ki, State Counsel.

Mr Chee Keng Soon, Auditor-General.

Mr Teo Chee Khiang, Deputy Auditor-General.

Ms Low Sin Leng, Deputy Secretary (Budget).

Mrs Pek Siok Ching, Director (Revenue).

-
1. Mr Shriniwas Rai (Paper 9) was examined.
 2. Mr Kenneth Chew (Paper 10) was examined.

3. Mr Vincent Tay Shian Poh (Paper 12) was examined.
4. Mr Khaleel Namazie (Secretary), Mr Sean Ng (Member), Mr Bernard Tan (Member) and Mr Anil Kumar Samtani (Member) of the National University of Singapore Law Club (Paper 21) were examined.
5. Mr C. R. Rajah (President), Mr Warren Khoo (Vice- President) and Mr Michael Hwang (Chairman, Legislation and Special Assignments Committee (Civil)) of the Law Society of Singapore (Paper 31) were examined.

Adjourned till 10.30 a.m. on
Thursday, 15th November, 1990.

3rd Meeting

THURSDAY, 15TH NOVEMBER, 1990

10.30 a.m.

PRESENT:

Mr Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi.

Mr S. Chandra Das.

Mr Chiam See Tong.

Mr Davinder Singh.

Mr Goh Chok Tong.

Prof. S. Jayakumar.

BG Lee Hsien Loong.

Dr Ong Chit Chung.

Dr Ow Chin Hock.

BG George Yong-Boon Yeo.

ABSENT:

Mr S. Dhanabalan. (*on leave of absence*).

In Attendance

Mr Chris Liew Peng Fook, Accountant General.

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

Ms Tan Peck Cheng, Deputy Senior State Counsel.

Mrs Owi Beng Ki, State Counsel.

Mr Chee Keng Soon, Auditor-General.

Mr Teo Chee Khiang, Deputy Auditor-General.

Ms Low Sin Leng, Deputy Secretary (Budget).

Mrs Pek Siok Ching, Director (Revenue).

1. Mr Keith Tay (President), Mr Lim Hock San (Council Member), Mr Tan Kok Hiang (Council Member), Mr Don Ho Mun-Tuke (Council Member), Mr Gerard Ee (Council Member), Mr Kenneth Chew (Council Member) and Mr Lee Wai Kok (Executive Director) of the Institute of Certified Public Accountants of Singapore (Paper 27) were examined.

2. Mr Hoon Dah Hao (President), Mr Edwin Pang (Assistant General Secretary), Miss Tang Meen Er (Public Relations Secretary), Mr Goh Keng Hock (Assistant Public Relations Secretary), Mr Gary Chan (Publication Secretary) and Mr Charan Singh (Member) of the National University of Singapore Democratic Socialist Club (Paper 24) were examined.

3. Mr Walter Woon (Paper 26) was examined.

4. Associate Professor Valentine S. Winslow (Paper 28) was examined.

5. Mr Wee Han Kim (Paper 13) was examined.

Adjourned to a date to be fixed.

4th Meeting

FRIDAY, 14TH DECEMBER, 1990

2.00 p.m.

PRESENT:

Mr Speaker (Mr Tan Soo Khoon) *(in the Chair)*.

Mr S. Chandra Das.

Mr Chiam See Tong.

Mr Davinder Singh.

Mr S. Dhanabalan.

Prof. S. Jayakumar.

BG Lee Hsien Loong.

Dr Ong Chit Chung.

BG George Yong-Boon Yeo.

ABSENT:

Mr Abdullah Tarmugi *(on leave of absence)*.

Mr Goh Chok Tong *(on leave of absence)*.

Dr Ow Chin Hock *(on leave of absence)*.

In Attendance:

Mr Chris Liew Peng Fook, Accountant General.

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

Ms Tan Peck Cheng, Deputy Senior State Counsel.

Mr Chee Keng Soon, Auditor-General.

Ms Low Sin Leng, Deputy Secretary (Budget).

Mr Jaspal Singh, Director (Budget).

Mrs Pek Siok Ching, Director (Revenue).

Ms Christine Lee, Senior Revenue Officer (Investment)
(Revenue).

1. Bill considered clause by clause.

Clause 1:

Amendment made, in page 1, after line 6, by inserting

"(2) The President may appoint different dates
for the coming into operation of the different
provisions of this Act." - (Minister for Law).

Consequential amendment made, in page 1, line 3, after
"1.", by inserting " -(1)".

Clause 1, as amended, agreed to.

Clause 2:

Amendments made -

- (1) in page 2, lines 21 to 24, by leaving out "the
provisions of any law made by the Legislature
governing the conduct of elections to the office
of President", and inserting "Article 18";
- (2) in page 3, line 4, after "ending", by inserting
"after the next general election";
- (3) in page 3, line 5, by leaving out "next"; and
- (4) in page 3, lines 9 and 10, by leaving out "after
the next general election". - (Minister for Law).

Consequential amendment made, in page 2, line 6, by leaving out "22I", and inserting "22J".

Clause 2, as amended, agreed to.

Clause 3:

Amendments made -

- (1) in page 3, line 18, after "65,", by inserting "66,"; and
- (2) in page 3, line 19, after "Part", by inserting "IV or". (Minister for Law).

Consequential amendment made, in page 3, line 17, by leaving out "22N", and inserting "22O".

Clause 3, as amended, agreed to.

Clause 4:

Amendments made -

- (1) in page 3, line 34, by leaving out from "Legislature" to the full-stop in line 39;
- (2) in page 3, after line 39, by inserting -

"Presidential
Elections
Committee.

18.-(1) There shall be a Presidential Elections Committee whose function is to ensure that candidates for the office of President have the qualifications referred to in Article 19.

(2) The Presidential Elections Committee shall consist of

-

- (a) the Chairman of the Public Service Commission;
- (b) the Chairman of the Public Accountants Board established under the Accountants Act; and

Cap. 2A.

- (c) a member of the Presidential Council for Minority Rights nominated by the Chairman of the Council.
- (3) The Chairman of the Public Service Commission shall be the chairman of the Presidential Elections Committee and if he is absent from Singapore or for any other reason unable to discharge his functions, he shall nominate a Deputy Chairman of the Public Service Commission to act on his behalf.
- (4) The office of the member of the Presidential Elections Committee nominated under clause (2) (c) shall become vacant if he -
 - (a) dies;
 - (b) resigns from office by a letter in writing addressed to the chairman of the Committee; or
 - (c) has his nomination revoked by the Chairman of the Presidential Council for Minority Rights, and the vacancy shall be filled by a new member nominated by the Chairman of the Presidential Council for Minority Rights.
- (5) If the member of the Presidential Elections Committee referred to in clause (2) (b) or (c) is absent from Singapore or is for any other reason unable to discharge his functions, the Chairman of the Public Accountants Board or the

Chairman of the Presidential Council for Minority Rights shall appoint a member of the Public Accountants Board or a member of the Presidential Council for Minority Rights, as the case may be, to act on his behalf.

(6) The Presidential Elections Committee may regulate its own procedure and fix the quorum for its meetings.

(7) The Presidential Elections Committee may act notwithstanding any vacancy in its membership.

(8) Parliament may by law provide for the remuneration of members of the Presidential Elections Committee and the remuneration so provided shall be charged on the Consolidated Fund.

(9) A decision of the Presidential Elections Committee as to whether a candidate for election to the office of President has fulfilled the requirement of paragraph (e) or (g)(iv) of Article 19(2) shall be final and shall not be subject to appeal or review in any court.";

(3) in page 4, line 5, after "if", by inserting "he";

(4) in page 4, line 6, by leaving out "he";

(5) in page 4, after line 6, by inserting -

"(b) is not less than 45 years of age;

(c) possesses the qualifications specified in Article 44(2) (c) and (d);";

(6) in page 4, line 7, by leaving out "he";

(7) in page 4, by leaving out lines 9 to 18, and inserting -

"(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 - ";

(8) in page 4, lines 20, 21 and 22, by leaving out "Judge or Judicial Commissioner of the Supreme Court,";

(9) in page 4, after line 34, by inserting -

"(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.";

(10) in page 4, by leaving out line 35 to line 3 in page 5, and inserting -

"(3) The President shall -

(a) not hold any other office created or recognised by this Constitution;

(b) not actively engage in any commercial enterprise;

(c) not be a member of any political party; and

(d) if he is a Member of Parliament, vacate his seat in Parliament.

(4) Nothing in clause (3) shall be construed as requiring a person exercising the functions of the office of President pursuant to Article 22N or 220 to -

(a) if he is a member of any political party resign as a member of that party; or

(b) vacate his seat in Parliament or any other office created or recognised by this Constitution.";

(11) in page 5, line 24, after "Minister", by inserting "in accordance with Article 25";

(12) in page 5, line 31, by leaving out "debt,";

(13) in page 5, line 32, by leaving out "incurred,";

(14) in page 5, lines 37 and 38, by leaving out "referred to in Articles 22 and 22B", and inserting "to which Articles 22A and 22C, respectively, apply";

(15) in page 6, line 1, by leaving out from "the" to the semi-colon in line 3, and inserting "disapproval of transactions referred to in Article 22B(7), 22D(6) or 148G";

(16) in page 6, line 10, by leaving out from "the" to "the" in line 12, and inserting "exercise of his functions under section 12 of";

(17) in page 6, line 16, by leaving out from "Constitution" to "to" in line 17;

(18) in page 6, lines 20 and 21, by leaving out "22A(3), 22C(3), 144 and 148A", and inserting "22, 22A(1), 22B(2) and (7), 22C(1), 22D(2) and (6), 144, 148A, 148B and 148G";

(19) in page 7, line 13, by leaving out "member", and inserting "members";

(20) in page 7, after line 15, by inserting -

"(e) the chairman and members of the Presidential
Council for Religious Harmony
constituted under the Maintenance of
Religious Harmony Act 1990;

(f) the chairman and members of an advisory board
constituted for the purposes of Article
151;"

(21) in page 8, after line 13, by inserting -

"(2) (a) The chairman or member of a statutory
board to which this Article applies shall be
appointed for a term not exceeding 3 years and
shall be eligible for re-appointment.";

(22) in page 8, line 19, by leaving out from "the" to
the full-stop in line 37, and inserting "statutory
boards specified in Part I of the Fifth Schedule";

(23) in page 8, by leaving out line 38 to line 2 in
page 9, and inserting -

"(4) Subject to clause (5), the President
acting in accordance with the advice of the
Cabinet may, by order in the Gazette, add any
other statutory board to Part I of the Fifth
Schedule; and no statutory board shall be removed
from that Part by any such order.

(5) No statutory board shall by order under
clause (4) be added to Part I of the Fifth
Schedule if the total value of the reserves of
the statutory board on the date of making of such
order is less than \$100 million.";

(24) in page 9, by leaving out lines 3 to 12 (excluding
marginal note), and inserting -

"22B.-(1) Every statutory board to which
Article 22A applies shall -

(a) before the commencement of its financial
year, present to the President for his
approval its budget for that financial

year, together with a declaration by the chairman and the chief executive officer of the statutory board whether the budget when implemented is likely to draw on the reserves which were not accumulated by the statutory board during the current term of office of the Government;

- (b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget; and
- (c) within 6 months after the close of that financial year, present to the President -
 - (i) a full and particular audited statement showing the revenue received and expenditure incurred by the statutory board during that financial year;
 - (ii) as far as practicable, an audited statement of the assets and liabilities of the statutory board at the end of that financial year; and
 - (iii) a declaration by the chairman and the chief executive officer of the statutory board whether the statements referred to in sub-paragraphs (i) and (ii) show any drawing on the reserves not accumulated by the statutory board during the current term of office of the Government.";

(25) in page 9, line 17, by leaving out "down", and inserting "on";

(26) in page 9, line 21, by leaving out "down", and inserting "on";

(27) in page 9, line 27, by leaving out "from "board" to the full-stop in line 34, and inserting -

"(a) shall, within 3 months of the first day of that financial year, present to the President a revised budget for that financial year together with the declaration referred to in clause (1); and

(b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount provided in the approved budget of the statutory board for the preceding financial year, and if the President does not approve the revised budget, the statutory board may during that financial year incur total expenditure not exceeding the amount provided in the approved budget of the statutory board for the preceding financial year; and the budget for the preceding financial year shall have effect as the approved budget for that financial year";

(28) in page 9, after line 34, by inserting -

"(4) Any amount expended during a financial year under paragraph (b) of clause (3) shall be included in any revised budget subsequently presented to the President under that clause for that financial year.";

(29) in page 10, lines 1 and 2, by leaving out "chief executive officer and member of a statutory board", and inserting "statutory board and its chief executive officer";

(30) in page 10, line 4, by leaving out "expenditure", and inserting "transaction";

(31) in page 10, line 5, by leaving out "down", and inserting "on";

(32) in page 10, after line 8, by inserting -

" (7) Where pursuant to clause (6) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the transaction.

(8) Where after the commencement of this Article a statutory board is specified in Part I of the Fifth Schedule pursuant to an order made under Article 22A(4), any reference in this Article to the approved budget of a statutory board for the preceding financial year shall, in relation to the first-mentioned statutory board, be read as a reference to the budget for the financial year of the first-mentioned statutory board during which that order was made.";

(33) in page 10, after line 16, by inserting -

" (2)(a) A director of a Government company to which this Article applies shall be appointed for a term not exceeding 3 years and shall be eligible for re-appointment.";

(34) in page 10, line 22, by leaving out from "the" to the full-stop in line 35, and inserting "Government companies specified in Part II of the Fifth Schedule";

(35) in page 10, by leaving out lines 36 to 38, and inserting -

" (4) Subject to clause (5), the President acting in accordance with the advice of the Cabinet may, by order in the *Gazette*, add any other Government company to Part II of the Fifth Schedule; and no Government company shall be removed from that Part by any such order.

(5) No Government company shall by order under clause (4) be added to Part II of the Fifth Schedule unless on the date of making of such order - ";

(36) in page 10, line 39, by leaving out "shareholder's", and inserting "shareholders";

(37) in page 11, lines 4, 5 and 6, by leaving out "Government company specified in clause (3) (a) to (d)", and inserting "of the Government companies specified in Part II of the Fifth Schedule";

(38) in page 11, by leaving out lines 10 to 21 (excluding marginal note), and inserting -

"22D.-(1) The board of directors of every Government company to which Article 22C applies shall -

(a) before the commencement of its financial year, present to the President for his approval its budget for that financial year, together with a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the budget when implemented is likely to draw on the reserves which were not accumulated by the Government company during the current term of office of the Government;

(b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget; and

(c) within 6 months after the close of that financial year, present to the President -

(i) a full and particular audited profit and loss account showing the revenue collected and expenditure incurred by the Government company during that financial year, and an audited balance-sheet showing the assets and liabilities of the Government company at the end of that financial year; and

(ii) a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the audited profit and loss account and balance-sheet of the Government company show any drawing on the reserves not accumulated by the Government company during the current term of office of the Government.";

(39) in page 11, line 36, by leaving out from "company" to the full-stop in line 2 in page 12, and inserting -

" -

- (a) shall, within 3 months of the first day of that financial year, present to the President a revised budget for that financial year together with the declaration referred to in clause (1); and
- (b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount provided in the approved budget of the Government company for the preceding financial year,

and if the President does not approve the revised budget, the Government company may during that financial year incur a total expenditure not exceeding the amount provided in the approved budget of the Government company for the preceding financial year; and the budget for the preceding financial year shall have effect as the approved budget for that financial year";

(40) in page 12, after line 2, by inserting -

"(4) Any amount expended during a financial year under paragraph (b) of clause (3) shall be included in any revised budget subsequently

presented to the President under that clause for that financial year.";

(41) in page 12, lines 3 and 4, by leaving out "every director and chief executive officer of a", and inserting "the board of directors and the chief executive officer of every";

(42) in page 12, line 6, by leaving out "expenditure", and inserting "transaction";

(43) in page 12, line 7, by leaving out "down", and inserting "on";

(44) in page 12, after line 9, by inserting -

"(6) Where pursuant to clause (5) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the transaction.

(7) Where after the commencement of this Article a Government company is specified in Part II of the Fifth Schedule pursuant to an order made under Article 22C(3), any reference in this Article to the approved budget of a Government company for the preceding financial year shall, in relation to the first-mentioned Government company, be read as a reference to the budget for the financial year of the first-mentioned Government company immediately preceding the making of that order.";

(45) in page 13, lines 9 and 10, by leaving out "a Minister", and inserting "any person";

(46) in page 13, line 11, by leaving out "a Minister", and inserting "any person";

(47) in page 14, by leaving out lines 4 to 12 (including marginal note), and inserting -

"Restraining
order under
Maintenance of
Religious
Harmony Act.
Act 26 of 1990.

22I. The President, acting in his discretion, may cancel, vary, confirm or refuse to confirm a restraining order made under the Maintenance of Religious Harmony Act 1990 where the advice of the Cabinet is contrary to the recommendation of the Presidential Council for Religious Harmony.";

(48) in page 15, by leaving out lines 5 to 10 (excluding marginal note), and inserting -

"22K.-(1) Except as provided in clause (4), the President shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to be done by him in his official capacity.

(2) No proceedings in any court in respect of anything done or omitted to be done by the President in his private capacity shall be instituted against him during his term of office.";

(49) in page 16, by leaving out line 7 to line 8 in page 17, and inserting -

" (3) The Prime Minister or not less than one-quarter of the total number of the Members of Parliament may give notice of a motion alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that, the President has been guilty of -

- (a) intentional violation of the Constitution;
- (b) treason;
- (c) misconduct or corruption involving the abuse of the powers of his office; or

- (d) any offence involving fraud, dishonesty or moral turpitude, and setting out full particulars of the allegations made and seeking an inquiry and report thereon.

(4) Where the motion referred to in clause (3) has been adopted by not less than half of the total number of the Members of Parliament, the Chief Justice shall appoint a tribunal to inquire into the allegations made against the President.

(5) A tribunal appointed by the Chief Justice shall consist of not less than 5 Judges of the Supreme Court of whom the Chief Justice shall be one, unless he otherwise decides and such tribunal may regulate its own procedure and make rules for that purpose.";

(50) in page 17, by leaving out lines 14 to 16, and inserting -

"(7) Where the tribunal reports to the Speaker that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any of the other allegations contained in such resolution, Parliament may by a resolution passed by not less than three-quarters of the total number of the Members of Parliament remove the President from office.";

(51) in page 18, line 6, by leaving out "Chief Justice", and inserting "Chairman of the Council of Presidential Advisors"; and

(52) in page 18, line 12, by leaving out "Chief Justice", and inserting "Chairman of the Council of Presidential Advisors". - (Minister for Law).

Consequential amendments made

- (1) in page 4, line 1, by leaving out "18", and inserting "19";
- (2) in page 4, line 7, by leaving out "(b)", and inserting "(d)";

- (3) in page 4, line 8, by leaving out "and";
- (4) in page 4, line 19, by leaving out "(a)", and inserting "(i) as";
- (5) in page 4, line 26, by leaving out "(b)", and inserting "(ii) as";
- (6) in page 4, line 27, by leaving out "22", and inserting "22A";
- (7) in page 4, line 28, by leaving out "or";
- (8) in page 4, line 29, by leaving out "(c)", and inserting "(iii) as";
- (9) in page 4, line 34, by leaving out the full-stop, and inserting "; or";
- (10) in page 5, line 4, by leaving out "19", and inserting "20";
- (11) in page 5, line 16, by leaving out "20", and inserting "21";
- (12) in page 5, line 28, by leaving out "22D, 22G", and inserting "22E, 22H";
- (13) in page 6, line 38, by leaving out "21", and inserting "22";
- (14) in page 7, to renumber paragraphs (e) to (1) as paragraphs (g) to (n), respectively;
- (15) in page 7, line 30, by leaving out "22", and inserting "22A";
- (16) in page 8, line 14, by leaving out "(2)", and inserting "(b)";
- (17) in page 9, line 13, by leaving out "(3)", and inserting "(2)";
- (18) in page 9, line 24, by leaving out "(4)", and inserting "(3)";

- (19) in page 10, line 9, by leaving out "22B", and inserting "22C";
- (20) in page 10, line 17, by leaving out "(2)", and inserting "(b)";
- (21) in page 11, to renumber clauses (3) and (4) as clauses (2) and (3), respectively;
- (22) in page 12, line 10, by leaving out "22D", and inserting "22E";
- (23) in page 12, line 17, by leaving out "22E", and inserting "22F";
- (24) in page 12, line 24, by leaving out "22 or 22B", and inserting "22A or 22C";
- (25) in page 12, line 37, by leaving out "22 or 22B", and inserting "22A or 22C";
- (26) in page 13, line 4, by leaving out "22F", and inserting "22G";
- (27) in page 13, by leaving out the marginal note, and inserting -

"President may withhold assent to Bill circumventing or curtailing his power.";
- (28) in page 13, line 15, by leaving out "22G", and inserting "22H";
- (29) in page 14, line 13, by leaving out "22I", and inserting "22J";
- (30) in page 14, lines 16 and 17, by leaving out "22M or 22N", and inserting "22N or 22O";
- (31) in page 15, to renumber clauses (2) and (3) as clauses (3) and (4), respectively;
- (32) in page 15, line 21, by leaving out "22G", and inserting "22H";
- (33) in page 15, line 24, by leaving out "22K", and inserting "22L";

(34) in page 15, line 29, by leaving out "22K", and inserting "22L";

(35) in page 15, line 36, by leaving out "(8)", and inserting "(7)";

(36) in page 17, line 9, by leaving out "(7)", and inserting "(6)";

(37) in page 17, line 17, by leaving out "22L", and inserting "22M";

(38) in page 18, line 4, by leaving out "22M", and inserting "22N";

(39) in page 18, line 28, by leaving out "22N", and inserting "220";

(40) in page 18, line 33, by leaving out "22M", and inserting "22N"; and

(41) in page 18, line 36, by leaving out "22M", and inserting "22N".

Clause 4, as amended, agreed to.

Clause 5 agreed to.

Clause 6:

Amendments made -

(1) in page 19, line 31, by leaving out "a Chairman and one other member", and inserting "two members";

(2) in page 19, line 37, by leaving out "two members", and inserting "one member";

(3) in page 19, after line 39, by inserting -

"(2) The President shall appoint one of the members of the Council as Chairman.";

(4) in page 20, line 2, by leaving out "3", and inserting "6";

(5) in page 20, line 4, after "office", by inserting
"except that in respect of the appointment of the
first members under clause (1), one of the two
members referred to in paragraphs (a) and (b) of
that clause shall be appointed for a term of 3
years instead of 6 years";

(6) in page 20, after line 4, by inserting -

"(4) During any period when the Chairman
exercises the functions of the office of the
President under Article 22N or 220, he shall not
act as the Chairman for that period and shall not
take part in the proceedings of the Council and
shall appoint -

(a) a person to serve as a member of the
Council for that period; and

(b) a member of the Council to act as
Chairman for that period.";

(7) in page 20, after line 40, by inserting -

"Termination of membership. 37F.-(1) The Chairman shall vacate
his seat in the Council when a newly
elected President assumes office
during the term of appointment of the
Chairman."; and

(8) in page 21, by leaving out line 38 to line 2 in
page 22 (excluding marginal note), and inserting -

"37J.-(1) The proceedings of the Council
shall be conducted in private and the Council may
require any public officer or any officer of any
statutory board or Government company to appear
before the Council and to give such information
in relation to any matter referred to the Council
by the President pursuant to Article 21(3) or (4)
and such officer shall not disclose or divulge to
any person any matter which has arisen at any
meeting of the Council unless he is expressly
authorised to do so by the President." -
(Minister for Law).

Consequential amendments made

- (1) in page 20, line 1, by leaving out "(2)", and inserting "(3)";
- (2) in page 21, by leaving out the marginal note;
- (3) in page 21, line 1, by leaving out "37F", and inserting "(2)"; and
- (4) in page 21, line 36, by leaving out "20", and inserting "21".

Clause 6, as amended, agreed to.

Clause 7 agreed to.

Clause 8:

Consequential amendments made

- (1) in page 23, line 6, by leaving out "22K(5)(a)", and inserting "22L(3)";
- (2) in page 23, line 8, by leaving out "22K(5)(b)", and inserting "22L(4)";
- (3) in page 23, lines 10 and 11, by leaving out "22K(5)(b)", and inserting "22L(4)";
- (4) in page 23, line 12, by leaving out "22K(4)", and inserting "22L(5)"; and
- (5) in page 23, line 19, by leaving out "22K(3)", and inserting "22L(7)".

Clauses 8 to 19 inclusive agreed to.

Clause 20:

Amendments made

- (1) in page 25, line 31, by leaving out "debt,";
- (2) in page 25, line 32, by leaving out "incurred,";

- (3) in page 25, line 33, before "under", by inserting "except";
- (4) in page 25, line 34, by leaving out "unless", and inserting "with which";
- (5) in page 25, line 35, by leaving out "therewith";
- (6) in page 26, lines 1 and 2, by leaving out "incurrence,";
- (7) in page 26, line 2, by leaving out "debt,";
- (8) in page 26, by leaving out lines 6 and 7;
- (9) in page 26, line 14, by leaving out "down", and inserting "on";
- (10) in page 26, by leaving out lines 17 to 22;
- (11) in page 26, line 36, after "purposes", by inserting "by any written law";
- (12) in page 27, after line 6, by inserting -
 - "(d) authorised to be issued by the Minister responsible for finance under Article 148B(4).";
- (13) in page 27, line 21, after "law", by inserting "or by the Minister responsible for finance under Article 148B(4)";
- (14) in page 28, line 30, by leaving out from "of" to the full-stop in line 36, and inserting -
 - "revenue and expenditure -
 - (a) a statement whether the annual estimates of revenue and expenditure is likely to draw on the reserves which were not accumulated by the Government during its current term of office; and

- (b) an audited statement showing as far as practicable the assets and liabilities of Singapore at the end of the last completed financial year";

(15) in page 28, after line 36, by inserting -

"(5) The Minister responsible for finance shall, as soon as practicable after the end of every financial year, prepare in respect of that year -

- (a) in relation to accounts maintained in respect of the Consolidated Fund, a full and particular account showing the amounts actually received and spent in that year, and a full and particular statement showing receipts and expenditure of any loan moneys;
- (b) a statement of receipts and expenditure of moneys accounted in the Development Fund Account;
- (c) a statement of receipts and expenditure of moneys accounted in any Government fund created by any law;
- (d) so far as is practicable, a statement of the assets and liabilities of Singapore at the end of the financial year;
- (e) so far as is practicable, a statement of outstanding guarantees and other financial liabilities of Singapore at the end of the financial year; and
- (f) such other statements as the Minister may think fit,

and, after the accounts and statements referred to in this clause have been audited, present to the President those audited accounts and statements together with another statement stating whether the audited accounts and statements referred to in this clause show any drawing on or likelihood of drawing on the reserves of the

Government which were not accumulated by the Government during its current term of office.";

(16) in page 30, line 3, by leaving out "and 148E", and inserting ", 148E and 148F(4)";

(17) in page 30, line 9, by leaving out "down", and inserting "on";

(18) in page 30, line 14, by leaving out "down", and inserting "on";

(19) in page 30, by leaving out lines 29 to 33, and inserting -

"Provided that -

(a) where the President withholds his assent to a Supply Bill, the expenditure so authorised in addition to any amount authorised under Article 148B(4) for that financial year shall not exceed the amount voted for that service or purpose in the Supply law or Final Supply law (if any) for the preceding financial year; or

(b) where the President withholds his assent to a Supplementary Supply Bill, the expenditure so authorised for any service or purpose shall not exceed the amount included in the Supplementary Supply Bill to replace any amount advanced from any Contingencies Fund under Article 148C(1) for that service or purpose.";

(20) in page 30, line 35, by leaving out "in relation", and inserting "following the withholding of assent by the President to a Supply Bill relating";

(21) in page 30, after line 43, by inserting -

"(4) In forming his opinion under clause (1) in relation to any Supplementary Supply Bill, the President shall not have regard to any amount for any service or purpose included in the

Supplementary Supply Bill which is to replace any amount advanced from any Contingencies Fund under Article 148C(1).

(5) For the purposes of this Article and Article 148D, where, on the expiration of 30 days after a Supply Bill or Supplementary Supply Bill has been presented to the President for his assent, the President has not signified the withholding of his assent to the Bill, the President shall be deemed to have given his assent to the Bill and the date of such assent shall be deemed to be the day immediately following the expiration of the said 30 days.";

(22) in page 31, after line 19, by inserting -

"(4) If no Supply Bill has become law by the first day of the financial year to which it relates (whether by reason of the President withholding his assent thereto or otherwise), the Minister responsible for finance may, with the prior approval of the Cabinet, authorise such expenditure (not otherwise authorised by law) from the Consolidated Fund, Development Fund or other Government fund as he may consider essential for the continuance of the public services or any purpose of development shown in the estimates until there is a Supply law for that financial year:

Provided that the expenditure so authorised for any service or purpose shall not exceed one-quarter of the amount voted for that service or purpose in the Supply law for the preceding financial year.";

(23) in page 31, line 24, by leaving out "either", and inserting "the appropriate"; and

(24) in page 32, after line 28, by inserting -

"Appointment of
A u d i t o r -
General.

148F.-(1) There shall be an Auditor-General who shall be appointed by the President in accordance with the advice of the Prime Minister unless the President,

acting in his discretion, does not concur with that advice.

(2) The Prime Minister shall, before tendering any advice under clause (1), consult the Chairman of the Public Service Commission.

(3) It shall be the duty of the Auditor-General to audit and report on the accounts of all departments and offices of the Government, the Public Service Commission, the Legal Service Commission, the Education Service Commission, the Police and Civil Defence Services Commission, the Supreme Court, all subordinate courts and Parliament.

(4) The Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government and accounts of other public authorities and other bodies administering public funds as may be prescribed by or under any written law.

(5) Subject to the provisions of this Article, the Auditor-General shall hold office until he attains the age of 55 years:

Provided that the President, acting in his discretion, may, if he concurs with the advice of the Prime Minister, permit an Auditor-General who has attained the age of 55 years to remain in office for such fixed period as may be agreed between the Auditor-General and the Government.

(6) A person who has held office as Auditor-General shall not be eligible for any other appointment as a public officer.

(7) The Auditor-General may at any time resign his office by writing under his hand addressed to the President.

(8) The Auditor-General may be removed from office by the President, if the President concurs with the advice of the Prime Minister, but the Prime Minister shall not tender such advice except for inability of the Auditor-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and except with the concurrence of a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court nominated for that purpose by the Chief Justice.

(9) The tribunal constituted under clause (8) shall regulate its own procedure and may make rules for that purpose.

(10) Parliament shall by law provide for the remuneration of the Auditor-General and the remuneration so provided shall be charged on the Consolidated Fund.

(11) The remuneration and other terms of service of the Auditor-General shall not be altered to his disadvantage during his continuance in office.

Duty to inform
President of
certain
transactions.

148G.-(1) It shall be the duty of 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 the reserves of the Government which were

not accumulated by the Government during its current term of office.

(2) Where pursuant to clause (1) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the proposed transaction.

Publication of
President's
opinion
regarding
certain
liabilities of
the Government.

148H. Where the President considers that certain liabilities of the Government, though not requiring his approval, are likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office, he shall state his opinion in writing to the Prime Minister and shall cause the same to be published in the Gazette." - (Minister for Law).

Consequential amendments made

- (1) in page 26, line 3, after the semi-colon, by inserting "or";
- (2) in page 26, line 5, by leaving out "; or", and inserting a full-stop;
- (3) in page 26, line 23, by leaving out "(4)", and inserting "(3)";
- (4) in page 27, line 2, by leaving out "or";
- (5) in page 27, line 6, by leaving out the full-stop, and inserting "; or";
- (6) in page 30, line 2, by leaving out "22I(3)", and inserting "18, 22J(3)"; and
- (7) in page 32, line 28, by leaving out the quotation mark and the full-stop.

Clause 20, as amended, agreed to.

Clause 21:

Amendments made

- (1) in page 32, line 34, by leaving out "or language", and inserting "the provisions of this Constitution relating to religion, citizenship or language"; and
- (2) in page 32, line 35, by leaving out from "words" to the full-stop in line 37, and inserting -
" " -
 - (i) Article 5(2A);
 - (ii) the provisions of this Constitution specified in Article 5(2A) conferring discretionary powers on the President; and
 - (iii) the provisions of this Constitution relating to religion, citizenship or language"". (Minister for Law).

Consequential amendment made, in page 32, lines 32 and 33, by leaving out "22D, 22G", and inserting "22E, 22H".

Clause 21, as amended, agreed to.

Clauses 22 and 23 agreed to.

Clause 24:

Amendment made, in page 33, line 17, by leaving out from "amended" to the end of line 18, and inserting -

" -

- (a) by deleting the form of oath for the office of the President and substituting the following form of oath:

"I,,having been *elected/appointed to exercise the functions of the President of the Republic of Singapore, do solemnly swear (or affirm) that I will faithfully

discharge my duties as such to the best of my ability without fear or favour, affection or ill-will, and without regard to any previous affiliation with any political party, and that I will bear true faith and allegiance to the Republic, and that I will preserve, protect and defend the Constitution of the Republic of Singapore."; and

- (b) by inserting at the end thereof the following form of oath:". - (Minister for Law).

Clause 24, as amended, agreed to.

Clause 25:

Amendments made

- (1) in page 33, line 28, after "of", by inserting "section 4 of";
- (2) in page 34, line 2, after "of", by inserting "section 4 of";
- (3) in page 34, line 10, after "of", by inserting "section 2 of";
- (4) in page 34, line 18, by leaving out "on or", and inserting "not less than 3 months";
- (5) in page 34, line 19, after "of", by inserting "section 4 of";
- (6) in page 34, line 21, by leaving out "on or", and inserting "not less than 3 months";
- (7) in page 34, line 22, after "of", by inserting "section 4 of"; and
- (8) in page 34, line 32, after "of" where it first occurs, by inserting "section 20 of". - (Minister for Law).

Consequential amendments made

- (1) in page 34, line 16, by leaving out "22A and 22C",
and inserting "22B and 22D"; and
- (2) in page 34, line 23, by leaving out "22A and 22C",
and inserting "22B and 22D".

Clause 25, as amended, agreed to.

New Clause immediately after clause 24:

New Clause brought up and read a first time:

"New Fifth
Schedule.

The Constitution is amended by
inserting, immediately after the Fourth
Schedule, the following Schedule:

"FIFTH SCHEDULE

(Articles 22A and 22C)

KEY STATUTORY BOARDS AND GOVERNMENT
COMPANIES.

PART I.

1. Board of Commissioners of
Currency, Singapore.
2. Central Provident Fund Board.
3. Housing and Development Board.
4. Jurong Town Corporation.
5. Monetary Authority of Singapore.
6. Post Office Savings Bank of
Singapore.

PART II.

1. Government of Singapore Investment Corporation Pte. Ltd.
2. MND Holdings Pte. Ltd.
3. Singapore Technologies Holdings Pte. Ltd.
4. Temasek Holdings Pte Ltd.".". (Minister for Law).

New clause read a second time and added to the Bill.

Consequential amendment made, by renumbering existing clause 25 as clause 26.

Bill to be reported.

REPORT

2. The Chairman's draft report brought up and read the first time.

3. Resolved, "That the Chairman's report be read a second time paragraph by paragraph.".

Paragraphs 1 to 76 inclusive read and agreed to.

4. Resolved, "That this report be the report of the Committee to Parliament.".

5. With regard to the written representations received and oral evidence heard by the Committee, agreed that only (i) the written submissions of representors from whom the Committee heard oral evidence, in public; and (ii) the Minutes of Evidence heard in public be reproduced with the Committee's Report.

6. Agreed that the Chairman do present the report when printed copies are available for distribution to Members of Parliament.

Adjourned sine die.

FRIDAY, 14TH DECEMBER 1990

CONSIDERATION OF BILL

(CLAUSE BY CLAUSE)

CONTENTS

Clauses 1 to 4 inclusive, as amended, agreed to

Clause 5 agreed to

Clause 6, as amended, agreed to

Clauses 7 to 19 inclusive agreed to

Clauses 20 and 21, as amended, agreed to

Clauses 22 and 23 agreed to

Clauses 24 and 25, as amended, agreed to

New Clause (A) agreed to

Bill to be reported

Report agreed to

PARLIAMENT OF SINGAPORE

(Second Session of the Seventh Parliament)

**SELECT COMMITTEE ON THE
CONSTITUTION OF THE REPUBLIC OF SINGAPORE
(AMENDMENT NO.3) BILL**

Official Report

(4th Meeting)

Friday, 14th December, 1990

The Committee met at 2.00 pm

PRESENT:

Mr Speaker (Mr Tan Soo Khoon (Brickworks GRC)).

Mr S. Chandra Das (Cheng San GRC).

Mr Chiam See Tong (Potong Pasir).

Mr Davinder Singh (Toa Payoh GRC).

Mr S. Dhanabalan (Kallang), Minister for National Development.

Prof. S. Jayakumar (Bedok GRC), Minister for Law and Minister for Home Affairs.

BG Lee Hsien Loong (Teck Ghee), Deputy Prime Minister and Minister for Trade and Industry.

Dr Ong Chit Chung (Bukit Batok).

BG George Yong-Boon Yeo (Aljunied GRC), Acting Minister for Information and the Arts.

ABSENT:

Mr Abdullah Tarmugi (Siglap), Deputy Speaker *(on leave of absence)*.

Mr Goh Chok Tong (Marine Parade GRC), Prime Minister and Minister for Defence *(on leave of absence)*.

Dr Ow Chin Hock (Leng Kee) *(on leave of absence)*.

In attendance:

Attorney-General's Chambers:

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

Ms Tan Peck Cheng, Deputy Senior State Counsel.

Auditor-General's Office:

Mr Chee Keng Soon, Auditor-General.

Ministry of Finance:

Ms Low Sin Leng, Deputy Secretary (Budget Division).

Mr Jaspal Singh, Director (Budget Division).

Mrs Pek Siok Ching, Director (Revenue Division).

Ms Christine Lee, Senior Revenue Officer (Investment) (Revenue Division).

Mr Chris Liew Peng Fook, Accountant-General.

[Mr Speaker in the Chair]

The Chairman: Good afternoon. I call the meeting to order. The first item on the Agenda is the consideration of the Bill clause by clause.

A Notice of Amendments to the Bill submitted by the Minister for Law on behalf of the Prime Minister has been circulated to Members. Prof. Jayakumar.

Prof. Jayakumar: Sir, may I make a preliminary request in moving the amendments? Can I, where there are more than one amendments to one clause, move all the amendments and then take up the reasons for each amendment?

The Chairman: Yes.

Clause 1 -(Short title and commencement.)

Prof. Jayakumar: Sir, I beg to move,

in page 1, after line 6, to insert -

"(2) The President may appoint different dates for the coming into operation of the different provisions of this Act."

This is to enable different commencement date for various provisions. The explanation for this is set out in paragraphs 71 to 73 of the draft Report.

Amendment agreed to.

Consequential amendment made:

in page 1, line 3, after "1.", to insert - (1)".

Clause 1, as amended, agreed to stand part of the Bill.

Clause 2 -(Amendment of Article 2.)

Prof. Jayakumar: Sir, I beg to move,

(1) in page 2, lines 21 to 24, to leave out "the provisions of any law made by the Legislature governing the conduct of elections to the office of President", and insert "Article 18";

(2) in page 3, line 4, after "ending", to insert "after the next general election";

(3) in page 3, line 5, to leave out "next";

(4) in page 3, lines 9 and 10, to leave out "after the next general election".

Sir, the first amendment is needed because we are now providing for the Presidential Elections Committee in the Bill itself, instead of a law to be enacted later, as is set out in Article 18.

The second, third and fourth amendments are drafting amendments arising from the definition of "term of office".

Amendments agreed to.

Consequential amendment made:

in page 2, line 6, to leave out "22P, and insert "22J".

Clause 2, as amended, agreed to stand part of the Bill.

Clause 3 -(Amendment of Article 5.)

Prof. Jayakumar: Sir, I beg to move,

(1) in page 3, line 18, after "65,", to insert "66,";

(2) in page 3, line 19, after "Part", to insert "IV or".

Sir, the amendment adds Article 66 and Part IV relating to fundamental liberties of the Constitution to the list of provisions which are especially entrenched in new Article 5(2A). The reasons are set out in paragraphs 18 to 21 of the draft Report.

Amendments agreed to.

Consequential amendment made:

in page 3, line 17, to leave out "22N", and insert "22O".

Clause 3, as amended, agreed to stand part of the Bill.

Clause 4 -(Repeal and re-enactment of Chapter I of Part V.)

Prof. Jayakumar: Sir, I beg to move,

(1) in page 3, line 34, to leave out from "Legislature" to the full-stop in line 39;

(2) in page 3, after line 39, to insert -

"Presidential
Elections
Committee.

18.-(1) There shall be a Presidential Elections Committee whose functions is to ensure that candidates for the office of President have the qualifications referred to in Article 19.

(2) The Presidential Elections Committee shall consist of -

(a) the Chairman of the Public Service Commission;

Cap.2A.

(b) the Chairman of the Public Accountants Board established under the Accountants Act; and

(c) a member of the Presidential Council for Minority Rights nominated by the Chairman of the Council.

(3) The Chairman of the Public Service Commission shall be the chairman of the Presidential Elections Committee and if he is absent from Singapore or for any other reason unable to discharge his functions, he shall nominate a Deputy Chairman of the Public Service Commission to act on his behalf.

(4) The office of the member of the Presidential Elections Committee nominated under clause (2)(c) shall become vacant if he -

(a) dies;

(b) resigns from office by a letter in writing addressed to the chairman of the Committee; or

(c) has his nomination revoked by the Chairman of the Presidential Council for Minority Rights, and the vacancy

shall be filled by a new member nominated by the Chairman of the Presidential Council for Minority Rights.

(5) If the member of the Presidential Elections Committee referred to in clause (2)(b) or (c) is absent from Singapore or is for any other reason unable to discharge his functions, the Chairman of the Public Accountants Board or the Chairman of the Presidential Council for Minority Rights shall appoint a member of the Public Accountants Board or a member of the Presidential Council for Minority Rights, as the case may be, to act on his behalf.

(6) The Presidential Elections Committee may regulate its own procedure and fix the quorum for its meetings.

(7) The Presidential Elections Committee may act notwithstanding any vacancy in its membership.

(8) Parliament may by law provide for the remuneration of members of the Presidential Elections Committee and the remuneration so provided shall be charged on the Consolidated Fund.

(9) A decision of the Presidential Elections Committee as to whether a candidate for election to the office of President has fulfilled the requirement of paragraph (e) or (g)(iv) of Article 19(2) shall be final and shall not be subject to appeal or review in any court."

Sir, the first amendment is consequential to the insertion of new Article 18.

The second amendment concerns new Article 18. This Article, Sir, is to establish the Presidential Elections Committee, its composition, and other related matters. The reasons for this Article are spelt out in paragraphs 16 to 17 of the draft Report.

Amendments agreed to.

Prof. Jayakumar: Sir, I beg to move,

(1) in page 4, line 5, after "if", to insert "he";

(2) in page 4, line 6, to leave out "he";

(3) in page 4, after line 6, to insert -

"(b) is not less than 45 years of age;

(c) possesses the qualifications specified in Article 44(2)(c) and (d);";

(4) in page 4, line 7, to leave out "he";

(5) in page 4, to leave out lines 9 to 18, and insert -

"(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 - ";

(6) in page 4, lines 20, 21 and 22, to leave out Judge or Judicial Commissioner of the Supreme Court,";

(7) in page 4, after line 34, to insert -

"(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.";

(8) in page 4, to leave out line 35 to line 3 in page 5, and insert -

"(3) The President shall -

(a) not hold any other office created or recognised by this Constitution;

(b) not actively engage in any commercial enterprise;

(c) not be a member of any political party; and

(d) if he is a Member of Parliament, vacate his seat in Parliament.

(4) Nothing in clause (3) shall be construed as requiring a person exercising the functions of the office of President pursuant to Article 22N or 22O to -

(a) if he is a member of any political party, resign as a member of that party; or

(b) vacate his seat in Parliament or any other office created or recognised by this Constitution.".

Sir, the first and second amendments are drafting amendments.

The third amendment is to provide for a minimum age of 45 and to require a candidate's name to appear in the register of electors and for him to fulfil certain

residential qualifications which are already applicable for election as an MP. The reasons are set out in paragraph 14(g) of the draft Report.

The fourth amendment is a drafting amendment.

The fifth amendment has two aspects: first, a candidate has to satisfy the PEC that he is a person of integrity, good character and reputation; secondly, he must not be a member of a political party on the date of his nomination. The reasons for the first amendment are set out in paragraph 14(d) of the draft Report. The reason for the amendment on membership of political party is set out in paragraph 14(f) of the draft Report. May I point out here that the draft Report also explains that campaigning by political parties will be permitted.

Amendment (6) is to delete the reference to Judges and Judicial Commissioners from the list. However, reference to the Chief Justice is retained, and the reasons for this are fully set out in paragraph 14(c) of the draft Report.

Amendment (7) makes it clear that others not on the list can also be considered for candidacy to the office of President. This is explained in paragraphs 14(a) and (b) of the draft Report. And the draft Report, may I add, also explains fully why the approach of the pre-qualification is maintained [paragraphs 6 to 13 of the draft Report].

As for amendment (8), this particular provision has been redrafted as a result of clause 4 of Article 18, now renumbered 19, to make reference to membership of a political party being a disqualification.

Amendments agreed to.

Consequential amendments made:

- (1) in page 4, line 1, to leave out "18", and insert "19";
- (2) in page 4, line 7, to leave out "(b)", and insert "(d)";
- (3) in page 4, line 8, to leave out "and";
- (4) in page 4, line 19, to leave out "(a)", and insert "(i) as";
- (5) in page 4, line 26, to leave out "(b)", and insert "(ii) as";
- (6) in page 4, line 27, to leave out "22", and insert "22A";
- (7) in page 4, line 28, to leave out "or";
- (8) in page 4, line 29, to leave out "(c)", and insert "(iii) as";
- (9) in page 4, line 34, to leave out the full-stop, and insert "; or";
- (10) in page 5, line 4, to leave out "19", and insert "20".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 5, line 24, after "Minister", to insert "in accordance with Article 25";

(2) in page 5, line 31, to leave out "debt,";

(3) in page 5, line 32, to leave out "incurred,";

(4) in page 5, lines 37 and 38, to leave out "referred to in Articles 22 and 22B", and insert "to which Articles 22A and 22C, respectively, apply";

(5) in page 6, line 1, to leave out from "the" to the semi-colon in line 3, and insert "disapproval of transactions referred to in Article 22B(7), 22D(6) or 148G";

(6) in page 6, line 10, to leave out from "the" to "the" in line 12, and insert "exercise of his functions under section 12 of";

(7) in page 6, line 16, to leave out from "Constitution" to "to" in line 17;

(8) in page 6, lines 20 and 21, to leave out "22A(3), 22C(3), 144 and 148A", and insert "22, 22A(1), 22B(2) and (7), 22C(1), 22D(2) and (6), 144, 148A, 148B and 148G".

Sir, the first amendment is a drafting amendment.

The second and third amendments are consequential to the new Article 144 in clause 20.

The fourth amendment is consequential to the amendments being made to Articles 22 and 22B, both of which are now re-numbered 22A and 22C.

The fifth amendment, Sir, deletes the requirement for the President to consent to a proclamation of emergency. As the draft Report points out in paragraphs 22 to 25, this is considered to be too wide a power. At the same time, on this amendment, there is substituted a new paragraph F to Article 22, consequent to the insertion of new Articles 22B(7), 22D(6) and Article 148G.

The sixth amendment is a drafting amendment corresponding to changes which have been made in the Maintenance of Religious Harmony Act.

The seventh amendment is a drafting amendment.

The eighth amendment is consequential to amendments elsewhere on additional functions given to the President in approving certain other transactions or certain other appointments.

Amendments agreed to.

Consequential amendments made:

- (1) in page 5, line 16, to leave out "20", and insert "21";
- (2) in page 5, line 28, to leave out "22D, 22G", and insert "22E, 22H".

Prof. Jayakumar: Sir, I beg to move,

- (1) in page 7, line 13, to leave out "member", and insert "members";
- (2) in page 7, after line 15, to insert -

"(e) the chairman and members of the Presidential Council for Religious Harmony constituted under the Maintenance of Religious Harmony Act 1990;

(f) the chairman and members of an advisory board constituted for the purposes of Article 151;"

The first amendment is a drafting amendment.

The second amendment is to require the President's approval for appointments to the Presidential Council for Religious Harmony as well as the Advisory Board under the Internal Security Act. Members will recall this was suggested by representors and the reasons are elaborated on in paragraphs 26 and 27 of the draft Report.

Amendments agreed to.

Consequential amendments made:

- (1) in page 6, line 38, to leave out "21", and insert "22";
- (2) in page 7, to renumber paragraphs (e) to (1) as paragraphs (g) to (n), respectively.

Prof. Jayakumar: Sir, I beg to move,

- (1) in page 8, after line 13, to insert -

"(2)(a) The chairman or member of a statutory board to which this Article applies shall be appointed for a term not exceeding 3 years and shall be eligible for re-appointment.";

(2) in page 8, line 19, to leave out from "the" to the full-stop in line 37, and insert "statutory boards specified in Part I of the Fifth Schedule";

- (3) in page 8, to leave out line 38 to line 2 in page 9, and insert -

"(4) Subject to clause (5), the President acting in accordance with the advice of the Cabinet may, by order in the *Gazette*, add any other

statutory board to Part I of the Fifth Schedule; and no statutory board shall be removed from that Part by any such order.

(5) No statutory board shall by order under clause (4) be added to Part I of the Fifth Schedule if the total value of the reserves of the statutory board on the date of making of such order is less than \$100 million."

Sir, the first amendment is to limit appointments to key statutory boards to three years for the reasons set out in paragraph 54 of the draft Report.

The second and third amendments are consequential to transferring the list of statutory boards to a new Schedule in the Constitution. The reasons for this are set out in paragraph 58 of the draft Report.

Amendments agreed to.

Consequential amendment made:

(1) in page 7, line 30, to leave out "22", and insert "22A";

(2) in page 8, line 14, to leave out "(2)", and insert "(b)".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 9, to leave out lines 3 to 12 (excluding marginal note), and insert -

"22B.-(1) Every statutory board to which Article 22A applies shall -

- (a) before the commencement of its financial year, present to the President for his approval its budget for that financial year, together with a declaration by the chairman and the chief executive officer of the statutory board whether the budget when implemented is likely to draw on the reserves which were not accumulated by the statutory board during the current term of office of the Government;
- (b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget; and
- (c) within 6 months after the close of that financial year, present to the President -
 - (i) a full and particular audited statement showing the revenue received and expenditure incurred by the statutory board during that financial year;

(ii) as far as practicable, an audited statement of the assets and liabilities of the statutory board at the end of that financial year; and

(iii) a declaration by the chairman and the chief executive officer of the statutory board whether the statements referred to in sub-paragraphs (i) and (ii) show any drawing on the reserves not accumulated by the statutory board during the current term of office of the Government.";

(2) in page 9, line 17, to leave out "down", and insert "on";

(3) in page 9, line 21, to leave out "down", and insert "on";

(4) in page 9, line 27, to leave out from "board" to the full-stop in line 34, and insert —

" -

(a) shall, within 3 months of the first day of that financial year, present to the President a revised budget for that financial year together with the declaration referred to in clause (1); and

(b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount provided in the approved budget of the statutory board for the preceding financial year,

and if the President does not approve the revised budget, the statutory board may during that financial year incur total expenditure not exceeding the amount provided in the approved budget of the statutory board for the preceding financial year; and the budget for the preceding financial year shall have effect as the approved budget for that financial year";

(5) in page 9, after line 34, to insert -

"(4) Any amount expended during a financial year under paragraph (b) of clause (3) shall be included in any revised budget subsequently presented to the President under that clause for that financial year.";

(6) in page 10, lines 1 and 2, to leave out "chief executive officer and member of a statutory board", and insert "statutory board and its chief executive officer";

(7) in page 10, line 4, to leave out "expenditure", and insert "transaction";

(8) in page 10, line 5, to leave out "down", and insert "on";

(9) in page 10, after line 8, to insert -

"(7) Where pursuant to clause (6) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the transaction.

(8) Where after the commencement of this Article a statutory board is specified in Part I of the Fifth Schedule pursuant to an order made under Article 22A(4), any reference in this Article to the approved budget of a statutory board for the preceding financial year shall, in relation to the first-mentioned statutory board, be read as a reference to the budget for the financial year of the first-mentioned statutory board during which that order was made."

Sir, the first amendment is to remove the prohibition on the key statutory boards incurring expenditures for which no provision is made in the budget. This is considered too rigid for statutory boards as we shall see also for Government companies for which there is a separate amendment. The reasons are elaborated in paragraph 48 of the draft Report. However, additional requirements are inserted by these amendments for the statutory boards to submit audited statement of actual revenues received and expenditure incurred. The explanation for this is in paragraphs 47 to 49 of the draft Report. Also, the Chairman of the statutory board and its Chief Executive Officer must also submit declarations whether the budget is likely to draw on reserves. This is explained in paragraph 52 of the draft Report.

The second and third amendments are drafting amendments.

The fourth amendment, firstly, it requires a statutory board to present a revised budget within three months where the President has not approved the budget it has submitted. Secondly, during this period, pending the President's decision, it can incur expenditure not more than a quarter of the previously approved budget and, if the revised budget is still not approved, the statutory board can only operate within the limits of the previous year's budget. This is elaborated on in paragraph 51 of the draft Report.

The fifth amendment is consequential.

The sixth amendment is also consequential since it is now proposed that the duty to inform the President on certain matters should not be imposed on every individual of the board but instead on the board itself and on the Chief Executive Officer. This is explained in paragraph 53 of the draft Report.

The seventh amendment, as explained in paragraph 53 of the draft Report, is necessary because the term "expenditure" is considered too restrictive and should be replaced by the term "transaction".

The eighth amendment is a drafting amendment.

The ninth amendment provides that when the President is so informed of certain transactions which are likely to draw on reserves, he can, acting in his discretion, disapprove it. Paragraph 53 of the draft Report explains this further.

Amendments agreed to.

Consequential amendments made:

(1) in page 9, line 13, to leave out "(3)", and insert "(2)";

(2) in page 9, line 24, to leave out "(4)", and insert "(3)".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 10, after line 16, to insert -

"(2)(a) A director of a Government company to which this Article applies shall be appointed for a term not exceeding 3 years and shall be eligible for re-appointment.";

(2) in page 10, line 22, to leave out from "the" to the full-stop in line 35, and insert "Government companies specified in Part II of the Fifth Schedule";

(3) in page 10, to leave out lines 36 to 38, and insert -

"(4) Subject to clause (5), the President acting in accordance with the advice of the Cabinet may, by order in the *Gazette*, add any other Government company to Part II of the Fifth Schedule; and no Government company shall be removed from that Part by any such order.

(5) No Government company shall by order under clause (4) be added to Part II of the Fifth Schedule unless on the date of making of such order -";

(4) in page 10, line 39, to leave out "shareholder's", and insert "shareholders";

(5) in page 11, lines 4, 5 and 6, to leave out "Government company specified in clause (3)(a) to (d)", and insert "of the Government companies specified in Part II of the Fifth Schedule".

Sir, the first amendment is similar to that which we have for statutory boards concerning a 3-year limit for the terms of appointment of directors of key Government companies. This is explained in paragraph 54 of the draft Report.

The reasons for the second and third amendments are also similar to the reasons given for the transferring of the list of statutory boards to a Schedule. Here we will also transfer the list of the key Government companies to the Schedule. This is explained in paragraph 58 of the draft Report.

The fourth amendment is a drafting amendment.

The fifth amendment is also consequential to the transfer of the key Government companies listed to a Fifth Schedule.

Amendments agreed to.

Consequential amendments made:

(1) in page 10, line 9, to leave out "22B", and insert "22C";

(2) in page 10, line 17, to leave out "(2)", and insert "(b)".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 11, to leave out lines 10 to 21 (excluding marginal note), and insert -

"22D.-(1) The board of directors of every Government company to which Article 22C applies shall -

- (a) before the commencement of its financial year, present to the President for his approval its budget for that financial year, together with a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the budget when implemented is likely to draw on the reserves which were not accumulated by the Government company during the current term of office of the Government;
- (b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget; and
- (c) within 6 months after the close of that financial year, present to the President -
 - (i) a full and particular audited profit and loss account showing the revenue collected and expenditure incurred by the Government company during that financial year, and an audited balance-sheet showing the assets and liabilities of the Government company at the end of that financial year; and
 - (ii) a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the audited profit and loss account and balance-sheet of the Government company show any drawing on the reserves not accumulated by the Government company during the current term of office of the Government.";

(2) in page 11, line 36, to leave out from "company" to the full-stop in line 2 in page 12, and insert -

" -

(a) shall, within 3 months of the first day of that financial year, present to the President a revised budget for that financial year together with the declaration referred to in clause (1); and

(b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount provided in the approved budget of the Government company for the preceding financial year,

and if the President does not approve the revised budget, the Government company may during that financial year incur a total expenditure not exceeding the amount provided in the approved budget of the Government company for the preceding financial year; and the budget for the preceding financial year shall have effect as the approved budget for that financial year";

(3) in page 12, after line 2, to insert -

"(4) Any amount expended during a financial year under paragraph (b) of clause (3) shall be included in any revised budget subsequently presented to the President under that clause for that financial year.";

(4) in page 12, lines 3 and 4, to leave out "every director and chief executive officer of a", and insert "the board of directors and the chief executive officer of every";

(5) in page 12, line 6, to leave out "expenditure", and insert "transaction";

(6) in page 12, line 7, to leave out "down", and insert "on";

(7) in page 12, after line 9, to insert -

(6) Where pursuant to clause (5) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the transaction.

(7) Where after the commencement of this Article a Government company is specified in Part II of the Fifth Schedule pursuant to an order made under Article 22C(3), any reference in this Article to the approved budget of a Government company for the preceding financial year shall, in relation to the first-mentioned Government company, be read as a reference to the budget for the financial year of the first-mentioned Government company immediately preceding the making of that order."

Sir, the first amendment is similar to those amendments made for statutory boards concerning, firstly, removing the prohibition of expenditure where no provision is made in the budget, as explained in paragraph 48 of the draft Report. Secondly, the requirement to submit a declaration by the board of directors and Chief Executive Officer as to whether a budget is likely to draw on the reserves, elaborated in paragraph 52 of the draft Report. Thirdly, the submission of audited profit and loss accounts and balance sheet. Paragraphs 47 to 49 of the draft Report explain this further.

The second amendment is also similar to amendments made to statutory boards concerning submission of revised budget to be made within three months. Similar amendments are made here for Government companies. This is explained in paragraph 51 of the draft Report.

The third amendment is consequential to the changes that I have just described.

The fourth amendment is similar to the amendment for statutory boards because we are no longer imposing the duty on each individual director but instead on the board of directors and the Chief Executive Officer.

The fifth amendment, as I explained earlier, is to replace the term "expenditure" with the term "transaction".

The sixth amendment is a drafting change.

The seventh amendment has two aspects. First, where the President is so informed of a transaction likely to draw on reserves, he can disapprove of the transaction. The second amendment which is in sub-clause (7) is a technical amendment to provide for the case or situation of a new Government company being added to the list in the Schedule but which does not have a budget previously approved by the President.

Amendments agreed to.

Consequential amendments made:

- (1) in page 11, to renumber clauses (3) and (4) as clauses (2) and (3), respectively;
- (2) in page 12, line 10, to leave out "22D", and insert "22E";
- (3) in page 12, line 17, to leave out "22E", and insert "22F";
- (4) in page 12, line 24, to leave out "22 or 22B", and insert "22A or 22C";
- (5) in page 12, line 37: to leave out "22 or 22B", and insert "22A or 22C".

Prof. Jayakumar: Sir, I beg to move,

- (1) in page 13, lines 9 and 10, to leave out "a Minister", and insert "any person";
- (2) in page 13, line 11, to leave out "a Minister", and insert "any person".

Sir, this relates to the President's safeguard role on CPIB investigations and the effect of the amendments is that the President's role on CPIB investigations is no longer confined to situations where the Prime Minister's refusal to consent is on investigations concerning Ministers only. The effect of the amendments is that the President's role applies to CPIB investigations concerning any person. This is explained in paragraph 28 of the draft Report.

Amendments agreed to.

Consequential amendment made:

in page 13, line 4, to leave out "22F", and insert "22G".

Alteration made:

in page 13, to leave out the marginal note, and insert -

"President may withhold assent to Bill circumventing or curtailing his power.";

Consequential amendment made:

in page 13, line 15: to leave out "22G", and insert "22H".

Prof. Jayakumar: Sir, I beg to move,

in page 14, to leave out lines 4 to 12 (including marginal note), and insert -

"Restraining order under Maintenance of Religious Harmony Act. Act 26 of 1990.	221. The President, acting in his discretion, may cancel, vary, confirm or refuse to confirm a restraining order made under the Maintenance of Religious Harmony Act 1990 where the advice of the Cabinet is contrary to the recommendation of the Presidential Council for Religious Harmony."
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Sir, this is a redrafting of that particular provision which is necessary because of the provision in the Maintenance of Religious Harmony Act which now requires the President to confirm restraining orders made under that Act.

Amendment agreed to.

Consequential amendments made:

(1) in page 14, line 13, to leave out "22I", and insert "22J";

(2) in page 14, lines 16 and 17, to leave out "22M or 22N", and insert "22N or 22O".

Prof. Jayakumar: Sir, I beg to move,

in page 15, to leave out lines 5 to 10 (excluding marginal note), and insert -

"22K.-(1) Except as provided in clause (4), the President shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to be done by him in his official capacity.

(2) No proceedings in any court in respect of anything done or omitted to be done by the President in his private capacity shall be instituted against him during his term of office."

Sir, this has been redrafted to take into account suggestions that the President's immunity in relation to his official acts should continue even after he has left office. This is elaborated in paragraphs 43 and 44 of the draft Report.

Amendment agreed to.

Consequential amendments made:

(1) in page 15, to renumber clauses (2) and (3) as clauses (3) and (4), respectively;

(2) in page 15, line 21, to leave out "22G", and insert "22H";

(3) in page 15, line 24, to leave out "22K", and insert "22L".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 16, to leave out line 7 to line 8 in page 17, and insert -

"(3) The Prime Minister or not less than one-quarter of the total number of the Members of Parliament may give notice of a motion alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of -

(a) intentional violation of the Constitution;

(b) treason;

(c) misconduct or corruption involving the abuse of the powers of his office; or

(d) any offence involving fraud, dishonesty or moral turpitude, and setting out full particulars of the allegations made and seeking an inquiry and report thereon.

(4) Where the motion referred to in clause (3) has been adopted by not less than half of the total number of the Members of Parliament, the Chief Justice shall appoint a tribunal to inquire into the allegations made against the President.

- (5) A tribunal appointed by the Chief Justice shall consist of not less than 5 Judges of the Supreme Court of whom the Chief Justice shall be one, unless he otherwise decides and such tribunal may regulate its own procedure and make rules for that purpose.";

(2) in page 17, to leave out lines 14 to 16, and insert -

"(7) Where the tribunal reports to the Speaker that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any of the other allegations contained in such resolution, Parliament may by a resolution passed by not less than three-quarters of the total number of the Members of Parliament remove the President from office.".

Sir, amendments (1) and (2) taken together have restructured the provisions on removal of the President. The basic substance of the previous provisions has not really been altered. However, as some representors have suggested, this Article now expressly incorporates the grounds on which the President can be removed. This is elaborated in paragraph 42 of the draft Report.

Amendments agreed to.

Consequential amendments made:

(1) in page 15, line 29, to leave out "22K", and insert "22L";

(2) in page 15, line 36, to leave out "(8)", and insert "(7)";

(3) in page 17, line 9, to leave out "(7)", and insert "(6)";

(4) in page 17, line 17: to leave out "22L", and insert "22M".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 18, line 6, to leave out "Chief Justice", and insert "Chairman of the Council of Presidential Advisors";

(2) in page 18, line 12, to leave out "Chief Justice", and insert "Chairman of the Council of Presidential Advisors".

Sir, both amendments concern the question of persons performing the functions of President where the office is vacant or in situations of temporary disability and so on. The point made by some representors about the Chief Justice being inappropriate for this purpose has been accepted and it is now provided that the Chairman of the Council of Presidential Advisors and the Speaker, in that order, should perform those functions in those situations; failing their availability Parliament will appoint some other person, which is the present position in the Bill. The reasons are elaborated in paragraphs 38 to 41 of the draft Report.

Amendments agreed to.

Consequential amendments made:

- (1) in page 18, line 4, to leave out "22M", and insert "22N";
- (2) in page 18, line 28, to leave out "22N", and insert "22O";
- (3) in page 18, line 33, to leave out "22M", and insert "22N";
- (4) in page 18, line 36, to leave out "22M", and insert "22N".

Clause 4, as amended, agreed to stand part of the Bill.

Clause 5 agreed to stand part of the Bill.

Clause 6 -(*New Pan VA.*)

Prof. Jayakumar: Sir, I beg to move,

(1) in page 19, line 31, to leave out "a Chairman and one other member", and insert "two members";

(2) in page 19, line 37, to leave out "two members", and insert "one member";

(3) in page 19, after line 39, to insert -

"(2) The President shall appoint one of the members of the Council as Chairman.";

(4) in page 20, line 2, to leave out "3", and insert "6";

(5) in page 20, line 4, after "office", to insert "except that in respect of the appointment of the first members under clause (1), one of the two members referred to in paragraphs (a) and (b) of that clause shall be appointed for a term of 3 years instead of 6 years";

(6) in page 20, after line 4, to insert -

"(4) During any period when the Chairman exercises the functions of the office of the President under Article 22N or 22O, he shall not act as the Chairman for that period and shall not take part in the proceedings of the Council and shall appoint -

(a) a person to serve as a member of the Council for that period;
and

(b) a member of the Council to act as Chairman for that period."

The first amendment is a drafting amendment. The second amendment is to reduce the size of the Council of Presidential Advisors by having the Chairman of PSC to nominate only one member instead of two members as provided for in the Bill. This is explained in paragraph 30 of the draft Report.

Amendment (3) provides that the President can now appoint any of the members of the Council of Presidential Advisors to be the Chairman.

Amendment (4) is to change the term of office from 3 to 6 years.

Amendment (5) is to stagger the length of a term of members who are appointed to the first Council of of Presidential Advisors. The reasons for this are set out in paragraph 31 of the draft Report.

Amendment (6) is consequential to the amendment that the Chairman of the Council of Presidential Advisors can perform the functions of the President in certain situations. This provides that when he does so, he cannot exercise the functions of the CPA. This is explained further in paragraphs 33 and 40 of the draft Report.

Amendments agreed to.

Consequential amendment made:

in page 20, line 1, to leave out "(2)", and insert "(3)".

Prof. Jayakumar: Sir, I beg to move,

in page 20, after line 40, to insert -

"Termination of membership. 37F.-(1) The Chairman shall vacate his seat in the Council when a newly elected President assumes office during the term of appointment of the Chairman."

Sir, every new President ought to have the right to appoint a Chairman of the Council of Presidential Advisors. Therefore, the Chairman of the CPA must vacate his office when the new President is elected. This is explained further in paragraph 33 of the draft Report.

Amendment agreed to.

Consequential amendments made:

(1) in page 21, to leave out the marginal note;

(2) in page 21, line 1, to leave out "37F", and insert "(2)";

(3) in page 21, line 36, to leave out "20", and insert "21".

Prof. Jayakumar: Sir, I beg to move,

in page 21, to leave out line 38 to line 2 in page 22 (excluding marginal note), and insert -

"37J.-(1) The proceedings of the Council shall be conducted in private and the Council may require any public officer or any officer of any statutory board or Government company to appear before the Council and to give such information

in relation to any matter referred to the Council by the President pursuant to Article 21(3) or (4) and such officer shall not disclose or divulge to any person any matter which has arisen at any meeting of the Council unless he is expressly authorised to do so by the President."

Sir, this amendment takes into account suggestions that the CPA ought to be able to call public officers and officers of key statutory boards and Government companies to appear before it. The amendment also provides that such officers when they appear ought not to divulge the proceedings in the Council. This is explained in paragraph 34 of the draft Report.

Amendment agreed to.

Clause 6, as amended, agreed to stand part of the Bill.

Clause 7 agreed to stand part of the Bill.

Clause 8 -(Amendment of Article 65.)

Consequential amendments made:

- (1) in page 23, line 6, to leave out "22K(5)(a)", and insert "22L(3)";
- (2) in page 23, line 8, to leave out "22K(5)(b)", and insert "22L(4)";
- (3) in page 23, lines 10 and 11, to leave out "22K(5)(b)", and insert "22L(4)";
- (4) in page 23, line 12, to leave out "22K(4)", and insert "22L(5)";
- (5) in page 23, line 19, to leave out "22K(3)", and insert "22L(7)".

Clause 8 agreed to stand part of the Bill.

Clauses 9 to 19 inclusive agreed to stand part of the Bill.

Clause 20 -(Repeal and re-enactment of Part XI.)

Prof. Jayakumar: Sir, I beg to move,

- (1) in page 25, line 31, to leave out "debt,";
- (2) in page 25, line 32, to leave out "incurred,";
- (3) in page 25, line 33, before "under", to insert "except";
- (4) in page 25, line 34, to leave out "unless", and insert "with which";
- (5) in page 25, line 35, to leave out "therewith";
- (6) in page 26, lines 1 and 2, to leave out "incurrence," ;

- (7) in page 26, line 2, to leave out "debt,";
- (8) in page 26, to leave out lines 6 and 7;
- (9) in page 26, line 14, to leave out "down", and insert "on";
- (10) in page 26, to leave out lines 17 to 22.

Sir, all these are consequential amendments to the amendments which I have referred to earlier.

Amendments agreed to.

Consequential amendments made:

- (1) in page 26, line 3, after the semi-colon, to insert "or";
- (2) in page 26, line 5, to leave out "; or", and insert a full-stop;
- (3) in page 26, line 23, to leave out "(4)", and insert "(3)".

Prof. Jayakumar: Sir, I beg to move,

in page 26, line 36, after "purposes", to insert "by any written law".

Sir, this is also a consequential amendment.

Amendment agreed to.

Prof. Jayakumar: Sir, I beg to move,

- (1) in page 27, after line 6, to insert -

"(d) authorised to be issued by the Minister responsible for finance under Article 148B(4).";

- (2) in page 27, line 21, after "law", to. insert "or by the Minister responsible for finance under Article 148B(4)".

Sir, these amendments are consequential upon the insertion of new Article 148B(4).

Amendments agreed to.

Consequential amendments made:

- (1) in page 27, line 2, to leave out "or";
- (2) in page 27, line 6, to leave out the full-stop, and insert "; or".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 28, line 30, to leave out from "of" to the full-stop in line 36, and insert

"revenue and expenditure -

(a) a statement whether the annual estimates of revenue and expenditure is likely to draw on the reserves which were not accumulated by the Government during its current term of office; and

(b) an audited statement showing as far as practicable the assets and liabilities of Singapore at the end of the last completed financial year";

(2) in page 28, after line 36, to insert -

"(5) The Minister responsible for finance shall, as soon as practicable after the end of every financial year, prepare in respect of that year -

(a) in relation to accounts maintained in respect of the Consolidated Fund, a full and particular account showing the amounts actually received and spent in that year, and a full and particular statement showing receipts and expenditure of any loan moneys;

(b) a statement of receipts and expenditure of moneys accounted in the Development Fund Account;

(c) a statement of receipts and expenditure of moneys accounted in any Government fund created by any law;

(d) so far as is practicable, a statement of the assets and liabilities of Singapore at the end of the financial year;

(e) so far as is practicable, a statement of outstanding guarantees and other financial liabilities of Singapore at the end of the financial year; and

(f) such other statements as the Minister may think fit,

and, after the accounts and statements referred to in this clause have been audited, present to the President those audited accounts and statements together with another statement stating whether the audited accounts and statements referred to in this clause show any drawing on or likelihood of drawing on the reserves of the Government which were not accumulated by the Government during its current term of office."

Sir, the first amendment is to impose a duty on the Minister for Finance to furnish information on revenues and expenditure and liabilities of the Government. This is elaborated on in paragraph 62 of the draft Report.

The second amendment imposes a duty on the Minister for Finance similar to the duty on Government companies and statutory boards to submit post audit statements, profit and loss and balance sheet and a statement whether there is any drawing or likelihood of drawing on reserves. These are explained further in paragraphs 61, 62 and 64(b) of the draft Report.

Amendments agreed to.

Prof. Jayakumar: Sir, I beg to move,

in page 30, line 3, to leave out "and 148E", and insert ", 148E and 148F(4)".

Sir, this is purely a consequential amendment.

Amendment agreed to.

Consequential amendment made:

in page 30, line 2, to leave out "22I(3)", and insert "18, 22J(3)".

Prof. Jayakumar: Sir, I beg to move,

(1) in page 30, line 9, to leave out "down", and insert "on";

(2) in page 30, line 14: to leave out "down", and insert "on";

(3) in page 30, to leave out lines 29 to 33, and insert -

"Provided that -

(a) where the President withholds his assent to a Supply Bill, the expenditure so authorised in addition to any amount authorised under Article 148B(4) for that financial year shall not exceed the amount voted for that service or purpose in the Supply law or Final Supply law (if any) for the preceding financial year; or

(b) where the President withholds his assent to a Supplementary Supply Bill, the expenditure so authorised for any service or purpose shall not exceed the amount included in the Supplementary Supply Bill to replace any amount advanced from any Contingencies Fund under Article 148C(1) for that service or purpose.";

(4) in page 30, line 35, to leave out "in relation", and insert "following the withholding of assent by the President to a Supply Bill relating";

(5) in page 30, after line 43, to insert -

"(4) In forming his opinion under clause (1) in relation to any Supplementary Supply Bill, the President shall not have regard to any amount for any service or purpose included in the Supplementary Supply Bill which is to replace any amount advanced from any Contingencies Fund under Article 148C(1).

(5) For the purposes of this Article and Article 148D, where, on the expiration of 30 days after a Supply Bill or Supplementary Supply Bill has been presented to the President for his assent, the President has not signified the withholding of his assent to the Bill, the President shall be deemed to have given his assent to the Bill and the date of such assent shall be deemed to be the day immediately following the expiration of the said 30 days."

Sir, the first two are drafting amendments.

The third amendment clarifies the situation where the President withholds assent to a Supply Bill and also to a Supplementary Supply Bill. This is elaborated on in paragraph 68 of the draft report.

The fourth amendment is a drafting amendment.

The fifth amendment has two aspects. I will deal with them separately. Sub-clause (4) deals with a situation where a Supplementary Supply Bill has provisions for advances already made from a Contingencies Fund. This is explained in paragraph 68 of the draft Report. The second aspect in sub-clause (5) deals with a situation where the President fails to convey his decision on assent. And if no decision is conveyed within 30 days, then the President is deemed to have assented. This is explained in paragraph 67 of the draft Report.

Amendments agreed to.

Prof. Jayakumar: Sir, I beg to move,

in page 31, after line 19, to insert -

"(4) If no Supply Bill has become law by the first day of the financial year to which it relates (whether by reason of the President withholding his assent thereto or otherwise), the Minister responsible for finance may, with the prior approval of the Cabinet, authorise such expenditure (not otherwise authorised by law) from the Consolidated Fund, Development Fund or other Government fund as he may consider essential for the continuance of the public services or any purpose of development shown in the estimates until there is a Supply law for that financial year:

Provided that the expenditure so authorised for any service or purpose shall not exceed one-quarter of the amount voted for that service or purpose in the Supply law for the preceding financial year."

Sir, this amendment reinstates an existing provision in the Constitution, namely, Article 146(5), to take care of situations where for some reason or other there is no Supply law in force on the first day of the financial year. This is explained in paragraph 69 of the draft Report.

Amendment agreed to:

Prof. Jayakumar: Sir, I beg to move,

in page 31, line 24, to leave out "either", and insert "the appropriate".

Sir, this is purely a drafting amendment.
Amendment agreed to.

Consequential amendment made:

in page 32, line 28, to leave out the quotation mark and the full-stop.

Prof. Jayakumar: Sir, I beg to move,

in page 32, after line 28, to insert -

"Appointment of Auditor- General.	148F.-(1) There shall be an Auditor-General who shall be appointed by the President in accordance with the advice of the Prime Minister unless the President, acting in his discretion, does not concur with that advice.
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(2) The Prime Minister shall, before tendering any advice under clause (1), consult the Chairman of the Public Service Commission.

(3) It shall be the duty of the Auditor-General to audit and report on the accounts of all departments and offices of the Government, the Public Service Commission, the Legal Service Commission, the Education Service Commission, the Police and Civil Defence Services Commission, the Supreme Court, all subordinate courts and Parliament.

(4) The Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government and accounts of other public authorities and other bodies administering public funds as may be prescribed by or under any written law.

(5) Subject to the provisions of this Article, the Auditor-General shall hold office until he attains the age of 55 years:

Provided that the President, acting in his discretion, may, if he concurs with the advice of the Prime Minister, permit an Auditor-General who has attained the age of 55 years to remain in office for such fixed period as may be agreed between the Auditor-General and the Government.

(6) A person who has held office as Auditor-General shall not be eligible for any other appointment as a public officer.

(7) The Auditor-General may at any time resign his office by writing under his hand addressed to the President.

(8) The Auditor-General may be removed from office by the President, if the President concurs with the advice of the Prime Minister, but the Prime Minister shall not tender such advice except for inability of the Auditor-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and except with the concurrence of a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court nominated for that purpose by the Chief Justice.

(9) The tribunal constituted under clause (8) shall regulate its own procedure and may make rules for that purpose.

(10) Parliament shall by law provide for the remuneration of the Auditor-General and the remuneration so provided shall be charged on the Consolidated Fund.

(11) The remuneration and other terms of service of the Auditor-General shall not be altered to his disadvantage during his continuance in office.

Duty to inform
President of
certain
transactions.

148G.-(1) It shall be the duty of 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 the reserves of the Government which were not accumulated by the Government during its current term of office.

(2) Where pursuant to clause (1) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the proposed transaction.

Publication of
President's
opinion
regarding
certain
liabilities
of the
Government.

148H. Where the President considers that certain liabilities of the Government, though not requiring his approval, are likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office, he shall state his opinion in writing to the Prime Minister and shall cause the same to be published in the *Gazette*."

Sir, Article 148F deals with the establishment and other matters concerning the office of Auditor-General. This is explained in paragraph 74 of the draft Report.

New Article 148G imposes a duty on the Accountant-General and the Auditor-General to inform the President of any proposed transaction of the Government likely to draw on the reserves and the President can disapprove such transaction. This is explained in paragraph 64(a) of the draft Report.

The third new Article 148H deals with a situation where the President feels that certain liabilities, although not requiring approval, nonetheless may be likely to draw on reserves. He can alert the public and he would inform the Prime Minister of his opinion and at the same time cause his opinion to be published in the Gazette. This is explained in paragraph 64(c) of the draft Report.

Amendments agreed to.

Clause 20, as amended, agreed to stand part of the Bill.

Clause 21 -(Amendment of Article 150 .)

Prof. Jayakumar: Sir, I beg to move,

(1) in page 32, line 34, to leave out "or language", and insert "the provisions of this Constitution relating to religion, citizenship or language";

(2) in page 32, line 35, to leave out from "words" to the full-stop in line 37, and insert —

" —

(i) Article 5(2A);

(ii) the provisions of this Constitution specified in Article 5(2A) conferring discretionary powers on the President; and

(iii) the provisions of this Constitution relating to religion, citizenship or language""

Sir, these amendments would amend Article 150 of the Constitution which deals with emergency powers and it is to make it clear that the exercise of emergency powers cannot circumvent the President's safeguard roles under these new constitutional amendments. This is explained in paragraph 25 of the draft Report.

Amendments agreed to.

Consequential amendment made:

in page 32, lines 32 and 33, to leave out "22D, 22G", and insert "22E, 22H".

Clause 21, as amended, agreed to stand part of the Bill.

Clauses 22 and 23 agreed to stand part of the Bill.

Clause 24 -(Amendment of First Schedule.)

Prof. Jayakumar: Sir, I beg to move,

in page 33, line 17, to leave out from "amended" to the end of line 18, and insert

" -

- (a) by deleting the form of oath for the office of the President and substituting the following form of oath:

" I,,having been * elected/appointed to exercise the functions of the President of the Republic of Singapore, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability without fear or favour, affection or ill-will, and without regard to any previous affiliation with any political party, and that I will bear true faith and allegiance to the Republic, and that I will preserve, protect and defend the Constitution of the Republic of Singapore."; and

- (b) by inserting at the end thereof the following form of oath:".

Sir, earlier we approved an amendment which required a candidate standing for Presidential election not to be a member of any political party on the date of nomination. This amendment, Sir, is in a way related because it amends the oath of office of the President so that he will affirm that in discharging his duties he shall not have regard to any previous affiliation with any political party. This is explained in paragraph 14(f) of the draft Report.

Amendment agreed to.

Clause 24, as amended, agreed to stand part of the Bill.

Clause 25 -(Transitional provisions.)

Prof. Jayakumar: Sir, I beg to move,

- (1) in page 33, line 28, after "of", to insert "section 4 of";
- (2) in page 34, line 2, after "of", to insert "section 4 of";
- (3) in page 34, line 10, after "of", to insert "section 2 of";
- (4) in page 34, line 18, to leave out "on or", and insert "not less than 3 months";
- (5) in page 34, line 19, after "or", to insert "section 4 of";
- (6) in page 34, line 21, to leave out "on or", and insert "not less than 3 months";
- (7) in page 34, line 22, after "of", to insert "section 4 of" ;

(8) in page 34, line 32, after "of where it first occurs, to insert "section 20 of".

These are consequential amendments to the transitional provisions which are the result of the various amendments made elsewhere.

Amendment agreed to.

Consequential amendments made:

(1) in page 34, line 16, to leave out "22A and 22C", and insert "22B and 22D";

(2) in page 34, line 23, to leave out "22A and 22C", and insert "22B and 22D".

Clause 25, as amended, agreed to stand part of the Bill.

New Clause -

"New Fifth Schedule. The Constitution is amended by inserting, immediately after the Fourth Schedule, the following Schedule:

"FIFTH SCHEDULE

(Articles 22A and 22C)

KEY STATUTORY BOARDS AND GOVERNMENT COMPANIES.

PART I.

1. Board of Commissioners of Currency, Singapore.
2. Central Provident Fund Board.
3. Housing and Development Board.
4. Jurong Town Corporation.
5. Monetary Authority of Singapore.
6. Post Office Savings Bank of Singapore.

PART II.

1. Government of Singapore Investment Corporation Pte. Ltd.
2. MND Holdings Pte. Ltd.
3. Singapore Technologies Holdings Pte. Ltd.
4. Temasek Holdings Pte Ltd."." - [Prof. Jayakumar.]

Brought up, and read the First time.

Prof. Jayakumar: Sir, I beg to move, "That the clause be read a Second time."

Sir, this is to introduce a new Schedule where it will be set out the various key statutory boards and Government companies come in within the scope of the new provisions. I might add that for the reasons given in paragraph 57 of the draft Report, PSA, PUB and Telecom are now excluded from the list.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause will be inserted immediately after clause 24.

Consequential amendment made:

To renumber existing clause 25 as clause 26.

Bill to be reported.

REPORT

The Chairman: We come now to our second item of business which is to consider the Committee's Report to Parliament. Copies of the Chairman's draft Report have been handed to Members.

Prof. jayakumar: May I propose deleting the words "who must publish the President's opinion" in paragraph 64(c) and substituting them with "and shall cause his opinion to be published" In other words, the President shall inform the Prime Minister and shall cause his opinion to be published. This would be consistent with the provision in the amendment.

The Chairman: All right. Is it agreed that the draft Report, as amended, be accepted as a basis for discussion?

Hon. Members *indicated assent.*

Chairman's Report brought up, and read the First time.

Question put, and resolved

That the Chairman's Report be read a Second time, paragraph by paragraph.

Paragraphs 1 to 76 inclusive read and agreed to stand part of the Report.

Question put, and resolved,

That this Report be the Report of the Committee to Parliament.

The Chairman: I would like to seek the agreement of Members on the annexures which are to be presented with the Committee's Report. I refer particularly to the written representations received by the Committee; and the Minutes of Evidence heard by the Committee. Members may wish to consider only publishing the written submissions of representors from whom the Committee heard oral evidence, in public; and the Minutes of the Evidence heard in public. Is that agreed to by Members?

Hon. Members *indicated assent.*

The Chairman: I propose to present the Report when printed copies are available for distribution to Members of Parliament. Is that agreeable?

Hon. Members *indicated assent.*

The Chairman: That brings our deliberations to a close. The Committee is now functus officio.

Committee adjourned at 2.43 pm.