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Perfecting Singapore's system of political governance

Privileging elites in the quest for good governance

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4.1 Introduction

Singapore's institution of the Elected President is often misunderstood. Although it has been part of the system of institutional checks and balances since 1991, a popular misconception is that the President, as Head of State, is a centre of political power unto itself. The President's custodial powers are, however, reactive and blocking in nature, rather than being policy setting and directory.[1] Singapore's system of government remains a staunchly parliamentary one, where the elected government wields executive power exercised primarily by the Cabinet headed by the Prime Minister.[2] This misunderstanding of the constitutional role, power and functions of the Elected Presidency may reside in the fact that the President is popularly elected despite the office being ostensibly designed to be non-partisan and above politics. This lack of understanding of the Elected Presidency can be partly attributed to the fact that of the five presidential elections thus far (namely, 1993, 1999, 2005, 2011 and 2017), only two were contested (1993 and 2011) and they were separated by 18 years.[3]

The Elected Presidency is not a classic inter-branch check-and-balance institution. The classical conception of checks and balances in a constitutional system of government posits the separation of executive, legislative and judicial powers. The Legislature, for example, can hold the Executive accountable for its use of executive power. Through judicial review under constitutional or administrative law, the judiciary can examine and challenge the use of executive power for constitutionality and legality respectively. This is notwithstanding that in a traditional Westminster system of government, it is often said that the legislative and executive powers are "fused" as members of the Executive must first be members of the Legislature and that the Executive dominates or even controls the Legislature.

For some, however, the close link between the executive and legislative branches is apparently inconsistent with the separation of the executive and legislative functions. The so-called strict doctrine of the separation of powers is apparently incompatible with the parliamentary system of government because it requires an absolute separation of persons that constitute the individual branches as well as an institutional separation that permits no connection or linkage between branches. This constitutional orthodoxy is misleading as it suggests that in the

exercise of the various aspects of governmental power, a strict separation of powers exists in that each branch of government exercises only its prescribed function. The essential constitutional principle often ignored is that the separation of powers, in essence, requires that legislative, executive and judicial power are not wholly vested in one individual or single institution.

Any theory of responsible government, undergirded by the separation of powers, will entail some measure of both conflict and cooperation, whether one or the other dominates. Tension or conflict between the Executive and Legislature is a necessary and beneficial precondition to limiting and controlling government. This may at times give rise to a gridlock over major policy decisions and governmental initiatives, and potentially making government ineffective. However, the likelihood of tyranny of power is reduced through intervening checks and balances on the power of a single individual or institution. Put simply, the notion of separated powers demands a balance of institutional independence and interdependence. It is not about a strict equality of constitutional power but, rather, an equality of constitutional status among the branches. The different branches of government must be able to both maintain their status as independent constitutional actors and exercise limited (though not determinative) influence over the other branches.

The Singapore Constitution provides the Elected President with executive and legislative powers.[4] Where selected executive power is concerned, Singapore's Elected Presidency system is premised on and envisages an *intra-branch* mechanism to provide a heavily circumscribed and limited check on the Government. It was and remains an institution that is not specifically designed to thwart the will and prerogative of a dominant parliamentary government. Specifically, the use of past national reserves and the appointment of key public-sector office holders are the prerogative of the Government, namely, the Cabinet although they have to be counter-checked and concurred by the Elected President.

Since independence in 1965, Singapore has sought to constitutionally engineer a political system that meets its unique needs and aspirations. Although hewed from the British Westminster parliamentary model, the deliberate and regular institutional redesign of Singapore's electoral and political system has resulted in their evolving away from the original template. For instance, institutional innovations introduced during an intense burst of constitutional engineering between 1984 and 1991 saw the creation of the Non-Constituency Member of Parliament ("NCMP") (introduced in 1984), the Group Representation Constituency ("GRC") (1988), the Nominated Member of Parliament ("NMP") (1990), and culminating with the Elected President (1991) schemes.[5] To be sure, these innovations have been routinely criticized as disingenuous attempts by the ruling People's Action Party ("PAP") to further tilt the political playing field to its advantage and perpetuate its one-party dominance.[6]

Taking advantage of the strong electoral mandate in the September 2015 General Election where the PAP won almost 70 per cent of the popular vote, the PAP Government had embarked on the most significant renovation to the Elected President framework since its introduction. In his speech on 27 January 2016

during the debate on the President's Address at the opening of the thirteenth Parliament, Prime Minister Lee Hsien Loong noted that the principle of capable and qualified men and women carrying out the custodial duties mandated of the President under the Singapore Constitution remains valid. He observed that, "the details may need to be brought up to date" not just because of inflation but also because "our economy has grown, government spending has gone up, government reserves have accumulated, and the size and complexity of the organisations subject to the second key of the President have grown many fold".[7]

The latest changes to the Elected Presidency were made within a relatively compressed timeline. From start to end, including public consultations and effecting the necessary constitutional and legislative changes, it took about 13 months, with the fifth presidential election a mere seven months later in September 2017. By the end of 2016, the eligibility criteria were updated and enhanced after a process of public consultation, primarily through the Constitutional Commission chaired by Chief Justice Sundaresh Menon. Pre-qualification remains a key feature of the electoral process. The elected post remains an exclusive one limited to an elite group of individuals who meet the stringent eligibility criteria. The Government's stance is that the custodial powers of the Elected President require someone of standing, competence and experience. These changes take place against the backdrop of Singapore being on the threshold of Prime Minister Lee and his socalled third generation (3G) team preparing to hand over the reins of government to the fourth-generation leadership (4G) in a few years' time.

This chapter argues that the office of the Elected President is best understood as an elite institution with eligibility restricted to a select group by a stringent set of criteria for hopefuls from the public and private sectors. The Council of Presidential Advisers ("CPA"), also an elite body in its own right through its membership and the appointment process, advises the Elected President. That the CPA plays a significant role with respect to the triggering of a parliamentary override of a presidential veto reinforces the notion of a highly structured and conservatively calibrated intra-branch check on the Executive. The Elected Presidency, in the ostensible pursuit of good governance, is not conceived or designed as a locus of power unto itself. The institutional design, even in its latest iteration, seeks to reinforce the centrality of good men (and women) in utilizing good institutions to strengthen good governance. The latest set of changes signal a subtle shift in the tripartite relationship comprising the Elected President, the CPA and the Legislature in maintaining financial prudence and stewardship and the integrity of the public sector. With more of the President's discretionary powers subjected to consultation with the CPA, the CPA's reach is also augmented in the latest constitutional review.

This chapter is organized as follows. Section 4.2 examines the considerations behind the changes to the eligibility criteria for persons seeking to contest in the presidential election. The relevance of the Confucian ethos of leaders having a moral duty to act in the collective interest is highlighted as the starting point of the political leaders' moral authority to govern. This moral standing and authority is as important as the legal and political authority that comes with an electoral

mandate. Section 4.3 looks at the changes to the Council of Presidential Advisers as part of the overall endeavour to strengthen the Elected President's custodial powers framework while restraining the Elected President from constitutional overreach. In Section 4.4, the implementation of the most significant revamp to the Elected Presidency, including the procedural changes in the electoral process and the election campaigning, and the apparent haste in bringing forth the constitutional revamp, is described and critiqued. Section 4.5 concludes.

4.2 Contesting the Presidency – raising the bar

Given the particularistic neo-Confucian political culture subtly promoted by the Singapore Government, the political leadership valorizes the Confucian precept that leaders have a moral duty to act in the collective interest. It is from this that they derive their moral authority to govern even as the legal and political authority to govern comes from the electoral mandate.[8] This system of government is presumed to be virtuous and so can be trusted. To reinforce its approach to governance, the PAP government gave its imprimatur to and promoted the Confucian notion of good government by good men, incorporating it as a cornerstone of Singapore's political governance philosophy. Thus, the *Shared Values* White Paper declared:

> The concept of government by honourable men (*junzi*) who have a duty to do right for the people, and who have the trust and respect of the population, fits us better than the Western idea that a government should be given as limited powers as possible, and should always be treated with suspicion unless proven otherwise.[9]

In this scheme of things, the *junzi* (君子, Confucian gentleman)[10] and *li* (礼, proper behaviour in sync with societal order and norms through moral propriety) are dominant themes that continue to resonate with the political elites in Singapore.

Although the notion of the Confucian *junzi* is rarely invoked these days, the centrality of good men and women in the political leadership and bureaucracy continues to drive the institutional design, recruitment and promotion, and how governmental power is regulated. This is similarly the case for the Elected Presidency. This precept of good government by good men and women has been reinforced constitutionally with the latest and most extensive changes to the Elected Presidency. This quest to enhance and protect good governance is invariably tied with the political objective of managing the pace of political change.

As an intra-(Executive) branch check in Singapore's system of constitutional government, the President has the constitutional power to veto or disagree with the Government's proposals in the following key areas:

- Use of past financial reserves – that is, reserves not accumulated by the Government during its term of office;

- Appointment and removal of key office holders in the public service and in the statutory boards and government companies listed in the Fifth Schedule of the Constitution;
- Restraining Orders under the Maintenance of Religious Harmony Act (Cap. 167A, 2001, rev edn);
- Continued detention under the Internal Security Act (Cap. 143, 1985, rev edn);
- The Prime Minister's refusal to grant permission for corruption investigations by the Corrupt Practices Investigation Bureau ("CPIB").

The discretionary powers, pertaining to the use of past financial reserves and the appointment and removal of key office holders in the public service which are exercised in consultation with the Council of Presidential Advisers, provide an important check and balance to the parliamentary executive, especially in preventing the misuse of the nation's financial reserves and ensuring the integrity of the public service. Prior to 1991, such a check and balance mechanism was not specifically available at all. While Parliament then was a *de jure* constitutional check on the Executive's exercise of these powers, in reality, this was a very limited check because of the parliamentary majority held and the control of the Legislature by the Executive.

It was this apparent abiding fear of a "rogue government" running the country to the ground through profligate public spending and cronyism and corruption at the highest echelons of the public sector that prompted the search in the 1980s for a more effective checking mechanism resulting in the creation of the Elected Presidency.[11] This checking mechanism has been popularly described as the "second key". For example, to effect a drawdown of the past reserves or to appoint key public officials, both the Cabinet and the President must authorize it. The Prime Minister can no longer act unilaterally in these matters ever since the office of President was converted to an elected one in 1991. Making the Presidency an elected office was to confer on the President the requisite democratic legitimacy and moral authority to disagree with the elected Government's use of its "first key".

Given the significant custodial powers, the Constitutional Commission's key premise was to have "sufficiently stringent" eligibility criteria for presidential candidates.[12] Thus,

> it seems only sensible to require that one seeking to be elected should at least have a record suggesting that he has the technical competence and expertise to discharge the functions and exercise the powers of the Presidency appropriately and effectively.[13]

As such, the criteria had to be "updated periodically to keep pace with changing circumstances".[14] This ensures that only persons with the requisite experience and expertise are eligible to seek election. The White Paper stated that "[q]uantitative thresholds cannot remain fixed in perpetuity, because a country's economic situation does not itself remain static".[15] Given that the original eligibility criteria

used in past presidential elections were established in and had not been revised since 1991, an update was merited "to ensure their continued suitability and relevance".[16]

Both the Commission's report and the White Paper relied on the following data to conclude that there had been a sea change in Singapore's economic landscape between 1991 and 2016:[17]

a The original $100 million paid-up capital benchmark for private-sector candidates: in 1993, only 158 companies had at least $100 million in paid-up capital. These companies comprised the top 0.2 per cent of Singapore-incorporated companies.
b If ranked in 2016 by the size of their paid-up capital, the 158th company would have a paid-up capital of approximately $1.6 billion, or 16 times the $100 million threshold in 1991.
c The top 0.2 per cent of Singapore-incorporated companies would number about 600 in 2016, with the smallest of these having a paid-up capital of over $430 million – four times the $100 million threshold.

In addition, the White Paper observed that the size of the Government's reserves, which was the subject of the President's "second key", had also grown substantially over 25 years. In other words, "[t]he weight of the job has increased".[18] This can be usefully summarized in Table 4.1.[19]

4.2.1 From rogue governments to rogue presidents

The Commission was unequivocal that the stringent eligibility criteria for presidential candidates were necessary. Given the "considerable power that is vested in the Elected President",[20] it opined that the President's powers and responsibilities are "far more complex than some assumed them to be".[21] First, the President can single-handedly block the initiatives of the elected Government.[22] Like an elected Government, the President can "cause serious damage to the nation" whenever the President's custodial powers are used indiscriminately or unwisely.[23] This seemed to indicate that the Elected Presidency could, in its workings, transmogrify into a countervailing source of power, or even be a threat to the country. This notion of the "rogue president" arguably resulted in

Table 4.1 Increase in value of national assets between 1990 and 2015 under the President's custodial function.

	1990 ($ billion)	*2015 ($ billion)*	*Quantum of increase (%)*
Gross Domestic Product	71	402	566.2
Central Provident Fund balances	41	300	731.7
Official foreign reserves	48	351	731.3
Temasek's Net Portfolio Value	9	266	2955.6

the latest set of constitutional changes providing the CPA with a bigger say in the Elected President's use of his custodial powers.

Second, in discharging his custodial powers, the President will encounter "complex issues, some of a highly technical nature" and will require "wisdom".[24] These range from the economic case for enormous scale financial proposals to macroeconomic concerns to assessing competency and the character of candidates for key public service appointments to dealing deftly on matters relating to maintenance of security and public order. Given the scale and magnitude of the President's constitutional responsibilities, the Commission observed that, "Discretion in these areas cannot be meaningfully exercised by someone without the requisite experience and expertise".[25]

Third, the Commission opined that stringent eligibility criteria can "help to temper any politicization of the Presidential office and of the election process".[26] Finally, the President should have the "requisite experience to assess the CPA's recommendations and ultimately form his own independent judgment".[27] Responding to the view that the eligibility criteria for the President were far more stringent than the requirements to be Prime Minister, the Commission regarded such a comparison as being "premised upon a false comparison" between the two offices.[28] The Commission noted the following:

> At the outset, it should be noted that the office of Prime Minister is central to the Westminster system of Parliamentary democracy, where it is a cherished value that any adult member of the electorate, who is not subject to a disqualification, is able to run for a seat in Parliament. In the Westminster system, the Prime Minister is selected from among the Members of Parliament so elected. It would not be possible to impose stringent eligibility criteria upon those seeking election to Parliament without doing considerable violence to the Westminster system. The Elected Presidency, on the other hand, is not part of the Westminster system; instead, it was created as a refinement of this model and it was necessitated by our unique circumstances.[29]

This view of the Elected Presidency as not being part of the Westminster system seeks to mark the Elected Presidency as *sui generis*. Consequently, the constitutional norms and conventions that may apply to the Head of State in the Westminster system are arguably not applicable in the Singapore.

4.2.2 Raising the bar: not whether but how much

Having set the context and the rationale for stringency in the eligibility criteria, the Commission noted that such criteria have to be periodically updated "to keep pace with changing circumstances".[30] Coupled with the massive increase in assets that the President had custodial powers over, there was little doubt that the logical conclusion was that the original eligibility criteria had to be updated or risk becoming increasingly unfit for purpose.

Therefore, the question was not *whether* the eligibility criteria should be raised; instead, the pertinent question was *how much* should the criteria be raised. If the bar was raised too significantly, the pool of qualified persons could possibly be reduced significantly. The pool of qualified persons is a limited one since the breadth of skills, knowledge, experience and judgement required of the President under the Constitution is very demanding. From this small pool of qualified persons, those who might be keen to run for public office would naturally be much smaller.[31] And, in the case of a reserved election for the candidates from the Malay or Indian and Others communities, the number of qualified persons and potential candidates would be confined to a very select group.

As such, even as the eligibility criteria are updated and made more onerous in tandem with the significant increase in the value of national assets that the President has to safeguard, they should not result in a dramatic shrinkage in the pool of eligible Singaporeans, especially for the minority races. Consider the following: In the five presidential elections, only nine Certificates of Eligibility were issued.[32] Of these, only three such certificates were issued to non-Chinese – Mr S.R. Nathan in 1999 and 2005, and Madam Halimah Yacob in 2017. In these three elections, there was no contest as no other certificate of eligibility was awarded.

However, as for this concern about a shrinking of the pool of eligible persons to contest, the Commission considered that "an undue focus on the size of the pool [of potential candidates] is a distraction from the real task at hand, which is to ensure that candidates possess the requisite qualifications to satisfactorily discharge the responsibilities of the office".[33] The Commission felt that the eligibility criteria

> should be set at a level where they serve as an effective proxy to best capture individuals who are likely, in fact, to have the requisite experience and expertise. The criteria should not be manipulated so as to artificially increase (or reduce) the size of the pool of candidates, or to achieve any other collateral purpose.[34]

4.2.3 Ringing the changes – cautiously and boldly

> The central purpose of having eligibility criteria is to enhance the prospect that only candidates with the right experience and expertise to ably discharge the exacting responsibilities of the President will be able to seek election. Any revision of the eligibility criteria should be undertaken with this goal in mind.[35]

For the purpose of determining whether they meet the eligibility criteria, presidential hopefuls seeking candidacy were and are categorized either under the public sector or the private sector. In turn, for each category, there are two "tracks": automatic or deliberative. The most significant measure taken in the review and subsequent constitutional amendments was the enhancement of the criteria for

those seeking to qualify under the private-sector route. The Commission recommended three changes: (1) The nature of a qualifying company;
(2) The nature of the qualifying position within a qualifying company; and (3) The introduction of performance criteria. Taken together, they point to the need to evaluate whether a person who had helmed private-sector companies is likely to be able to bring a variety of relevant skills to the Presidency. These skills include experience in fiscal matters, management and responsibility for a substantial workforce. Such a skill set would stand the President in good stead as he would be more likely to understand and be able to evaluate the Government's complex proposals involving large sums of money and impacting the country. It would also assist the President "to assess and ask the right questions about persons being considered for very senior appointments".[36]

On the nature of a qualifying company, the Commission recommended that the indicator of paid-up capital be replaced with shareholders' equity. The latter was regarded as a better proxy for a company's size and complexity.[37] The Commission explained that the "shareholders' equity reflects the company's current (and not just its historical) recorded worth".[38] This was a more accurate reflection of the present size or complexity of a company. In this connection, the Commission also proposed that a company's shareholders equity be calculated by taking the average shareholders' equity value for three consecutive financial years.[39]

On the size of a company that is "more likely than not to be sufficiently large and complex", the Commission further recommended that minimum threshold for such a company is one with a shareholders' equity of $500 million.[40] Such companies tended to have substantial cross-border operations, transact significant sums of money, and their leaders making polycentric decisions taking into account diverse strategic and operational considerations.[41] The Commission acknowledged that the $500 million shareholders' equity figure was not derived through a mathematical or formulaic exercise; the threshold could be pegged to another figure within a given range. Instead, the Commission was guided by settling on a threshold that would likely indicate whether a person had the "requisite technical skills, experience and expertise in financial matters"[42] and which would not "dramatically shrink the pool of potentially qualified persons".[43]

On the nature of the qualifying position within a qualifying company, the Commission recommended that only the person holding the "most senior executive position" in the company be eligible.[44] The Commission was concerned that the criteria in the former Article 19(2)(g)(iii) placed "undue emphasis on form rather than substance".[45] Previously, a person who had been the chairman or the chief executive officer of a company of the requisite size requirement would have qualified regardless of his actual scope of responsibility and whether he was actively involved in running the company. Therefore, the Commission proposed that the person must have held the "highest level of executive authority in the company" for at least three years.[46]

These changes point unequivocally to the Commission preferring the eligibility criteria on the qualifying position to focus on the actual nature and scope of a person's work within the company. This ensures that people who merit automatic

qualification "have had practical experience in handling fiscal matters of sufficient size or complexity". For the Commission, the person in the most senior executive position "bears the ultimate weight of responsibility for the fate of the company". Through making decisions of scale and magnitude for a company of the requisite size, such a person is deemed to possess: "(a) the financial knowledge to comprehend the intricacies of the various proposals, and (b) the confidence that comes with a certain degree of familiarity with making decisions involving very large sums of money."[47] Referencing two examples of President Nathan approving a drawdown of past reserves in 2008 and 2009 during the "Global Financial Crisis", the Commission observed that "[t]here may be times when the President has to make these large and complex financial decisions on an urgent basis, without the benefit of time for lengthy deliberation and consideration."[48]

The Government agreed with the Commission's recommendations outlined above on the nature of a qualifying company and the nature of qualifying position within a qualifying company. The Government also agreed with the Commission's recommendation to introduce performance criteria for the qualifying company, namely, a record of net profitability and the company not going into liquidation or any type of insolvency process.[49] The Commission noted that these measures were "blunt",[50] but considered it desirable to require applicants to demonstrate that they have displayed an acceptable level of performance of the companies under their charge.[51] With the more stringent requirements for automatic qualification for applicants from the private sector, the bar was similarly and significantly raised for those seeking qualification under the deliberative route. Applicants under this track have to demonstrate that they have held a comparable office and thus possess the requisite expertise and experience to be the President.

4.2.4 A bifurcated approach to eligibility: public versus private

In contrast, for applicants from the public sector, the eligibility criteria underwent minor, if not cosmetic, changes – they were not substantially affected at all. For applicants who qualify automatically, they are deemed to possess the requisite experience and expertise by virtue of having held a stipulated public office for the minimum of three years.[52] Where the applicants do not qualify automatically, they have to satisfy the Presidential Elections Committee that the office they held was of a comparable nature to those held by persons who qualified under the automatic track.[53] For the qualifying public-sector offices, the Commission was of the view that the list was tightly drawn.[54] These offices are taken to indicate that the office holders have managed and led substantial organizations and acquired experience in dealing with complex matters having a "wide-reaching public dimension".[55]

The Commission, however, did recommend the removal of the offices of the Accountant-General and the Auditor-General from the list of tightly drawn qualifying public-sector offices.[56] The Commission's view was that the Accountant-General and the Auditor-General played "an indispensable but ultimately ancillary (and comparatively narrow) role in the delivery of public goods and services." However, they were not required to grapple with the "contrary

pulls and pressures of government decision-making".[57] The Government, however, did not agree with the recommendation. It decided to retain both offices as being automatically providing the type of experience and expertise needed for the office of the President.[58]

The Government's approach emphasizes the qualifying criteria for both the public and private sectors as being a set of proxy indicators on whether a person can do the job of the Elected President. However, given the contrasting set of changes for public-sector and private-sector applicants, the eligibility criteria could give a leg-up to public-sector candidates who qualify automatically even if some of the offices may provide much less exposure to financial matters than the private-sector candidates. Nevertheless, these public offices arguably provide the public office holder with the requisite exposure and other attributes, which private-sector candidates may lack, to discharge some presidential functions. As the Commission reasoned, the private- and public-sector routes to qualification while "targeted at identifying persons with the relevant skillsets, no single office is ever likely to endow the holder of that office with all the attributes necessary for him to discharge all the Presidential functions".[59] It was also of the view that "it may not be correct to compare the two routes as if they are precisely alike".[60]

The Commission did not recommend broadening the list of public-sector qualifying offices.[61] It also recommended that only an applicant who has held the most senior executive position in a scheduled statutory board may qualify as a presidential candidate.[62] Previously, Article 19(2)(g)(ii), the equivalent of the current Article 19(3)(b)(ii), provided for "Chairman" or "Chief Executive Officer" as qualifying positions. The current provision provides only for the chief executive of an entity specified in the Fifth Schedule of the Constitution. The Commission felt that only the "most senior" officers in these offices should be eligible. These officers "bear the ultimate weight of responsibility" for their organizations' performance; it is "this unique facet of leadership that qualifies them to hold Presidential office".[63]

Similarly, for private-sector candidates, the Commission persisted in having a person with the "most senior executive position" in the company being eligible. Article 19(10) of the Constitution states that the "chief executive" of an entity or organization "means the most senior executive (however named) in that entity or organisation. Such a person is principally responsible for the management and conduct of the entity's or organisation's business and operations". Furthermore, the Commission proposed that public-sector applicants should not be subjected to a performance assessment, unlike their private-sector counterparts.[64] It argued that the differentiation was due to there being "no *measurable standards* against which their performance may be assessed".[65] It also felt that a subjective assessment of an applicant's performance in public office would detract from the "clear and objective standard that the automatic track" was meant to provide.[66] Instead, the Commission proposed an alternative sift: double the duration public- and private-sector applicants have to hold a qualifying office from three to six years.[67] The Commission agreed with several contributors that three years was too short a period and the duration should be lengthened. It argued that time was needed to

"acquire and hone the requisite skills" and that "the length of time one spends in an office can be an indirect indication of that person's success in discharging the responsibilities of that office".[68]

While agreeing that applicants should have spent "adequate time" in a qualifying office, the Government preferred to maintain the original stipulation of three years in a qualifying office for both public- and private-sector candidates.[69] It opined, rather vaguely, that:

> the precise minimum duration to be set is ultimately a question of balance. Given the concurrent changes to other aspects of the eligibility criteria, the Government preferred to adopt a cautious approach, and retain the qualifying tenure at three years at this time.[70]

The Government's bifurcated approach in enhancing the eligibility criteria for private-sector applicants but not the public sector erred on being safe rather than sorry. It also suggests that public-sector applicants may be perceived to be a better fit for the Presidency. Regardless, even as it believed that the pool of eligible persons should be confined to a very select group, it was also concerned that this pool should not be dramatically reduced. With all previous Elected Presidents (namely, Ong Teng Cheong, S.R. Nathan and Tony Tan Keng Yam) hailing from the public sector, the Government adopted a precautionary approach for the public-sector route as compared with the private-sector route. It preferred to maintain the status quo of qualifying public offices since experience suggested that a person being eligible is one thing and whether one is keen to step forth and contest is another thing altogether.

The cautious tack vis-à-vis public-sector applicants demonstrated that the Government preferred the status quo and it would rather move gingerly and not seek to go the full extent that the Commission had recommended, especially on the eligibility criteria for public office holders. This preference for moderation in changes, especially for the public-sector positions, was also manifested by the Government not agreeing with the Commission's recommendation for a lookback period of 15 years for applicants. The Government agreed with the introduction of a currency requirement so that an applicant's experience remains "sufficiently relevant",[71] "given the rapidly evolving environment in which he will have to function".[72] However, the Government considered a longer lookback duration, which falls wholly or partially within the longer period of 20 years of the relevant presidential election, as being "suitably current".[73] Again, the Government was apprehensive about narrowing the field of eligible persons and so decided to "proceed cautiously, particularly as it is a new requirement".[74]

Even as it sought to update the eligibility criteria after 25 years, the overarching theme is the need to proceed with caution in mandating new eligibility requirements, especially for the public sector. This restraint stems from wanting to let time pass and "beta test" the enhanced eligibility criteria.[75] However,

where the eligibility criteria for private-sector applicants were concerned, the Government was eager to ring the changes. Such a contrasting approach was perhaps not surprising. To reiterate, since the first presidential election in 1993 to the most recent in 2017, all the Elected Presidents had qualified automatically through the public-sector route. Mindful of the uncertainty on how the proposed changes will work in reality, the Government's overall approach was a veritable mix of cautionary, pragmatic and political considerations. Arguably, the Government did not finely differentiate between these considerations since it had to ensure that whatever changes implemented have to work well, otherwise there will be a political backlash.

The Government preferred treading cautiously and to be able to make changes to the system without the cumbersome requirement of securing the requisite support through a national referendum. This means being able to roll back or go even further depending on how the latest changes work. The Government pointed to the past 25 years of working out the custodial powers framework and processes of the Elected Presidency to justify why it had not brought into force the entrenching constitutional provisions.[76] The aim of entrenching a constitutional provision is to make it more onerous to amend or repeal the provision in question. The requirement of a referendum vests the ultimate say in the people.[77]

4.2.5 Favouring financial and management nous

Raising the stringency of the eligibility criteria is hard to argue against. The value of the assets the President has custodial oversight of has increased many folds since 1991. Yet, it is hard, if not impossible, to devise an all-embracing set of criteria for a person's ability to fulfil the Elected President's full suite of constitutional, ceremonial and community roles. The eligibility criteria are overwhelmingly weighted in favour of financial and management *nous* for applicants from the private sector. For those with a public-sector background, financial and management *nous* is not the most important criterion; it does not occupy the same prominence as political or public-sector experience exemplified through automatic qualification for having held certain public offices.

Considering the President's ceremonial and community roles, judgement, wisdom and empathy are not given similar weight in the evaluation of eligibility.[78] On the one hand, there are the aspirations for the Elected President to be a symbol of multiracialism and a unifying figure to all Singaporeans. This was the whole basis of the reserved election proposal. The eligibility criteria do not at all interrogate whether a presidential aspirant has the ability, the track record or the gumption as an advocate, promoter and practitioner of multiracialism. This contrasts with the near overwhelming expectation that any presidential aspirant possesses the requisite expertise and experience for the custodial functions.

But the eligibility criteria clearly accord different weight to equivalent qualifying requirements for the public and private sectors (including both automatic and deliberative tracks). For persons from the private sector, the emphasis is to throw up a person who has the management and financial *nous*. The raising of the eligibility criteria for a qualifying company and a qualifying position

within a qualifying company confirms this. Indeed, the enhanced criteria may further restrict applicants from the private sector, who could very well execute the ceremonial and community roles but do not possess the requisite financial and management know-how.

Ultimately, the fall-back position to the bifurcated approach in determining eligibility of public- and private-sector applicants is that the eligibility criteria serve as a proxy indicator, not a guarantee or fail-proof measure, that a person has the requisite expertise and experience to perform the duties as President. Often, the President has the benefit of the advice of the CPA and the public bureaucracy on competing policy options or why a certain course of policy action should be embarked upon. What is then required is for the President to exercise judgement on the appropriate policy choices for which his custodial powers have to be applied to. All past and present Elected Presidents had spent substantial periods in the public sector. For instance, President Ong Teng Cheong was Deputy Prime Minister (1985–1993). President S.R. Nathan was a senior civil servant. President Tony Tan Keng Yam was Deputy Prime Minister (1995–2005) while President Halimah Yacob was from the trade union movement and Speaker of Parliament.

Given that the President performs custodial, ceremonial and community roles, the enhanced eligibility criteria may appear to be unnecessarily onerous and inordinately limits the pool of eligible persons who could bring to the office desirable attributes that are not or cannot be measured by the eligibility criteria.

4.2.6 Depoliticizing the Presidency

The Commission's conviction that the stringent eligibility criteria for presidential candidates were necessary paved the way for a significant enhancement of the criteria. It also signalled and reinforced the Elected Presidency as an elite institution rather than a popular one, and certainly not a populist institution. This is best exemplified in the measures the Commission proposed (and which were adopted) for candidates campaigning during the election and the undertaking required of candidates during the application process.[79] The goal is to depoliticize the Elected Presidency, understood here as the process of removing or reducing any political character not only of the office but also the decision-making in the exercise of the President's discretionary custodial powers. The effect is that any presidential discretion exercised is one step removed from political agency of the parliamentary executive (the Cabinet). Thus, the Elected Presidency is not an alternative or even a competing centre of power.

This deliberate attempt at depoliticization, however, underestimates that depoliticization is an intrinsically political process in and of itself. Being a popularly elected office inevitably politicizes the Presidency right from the outset. Similarly, having to exercise his discretion in the use of custodial powers, whether or not in alignment with the Government's proposal, renders the President's decision an inherently political one, even if the considerations that undergird the process and decision itself are non-political. The endeavour towards depoliticization reflects the attempt to forge a particularistic narrative of the Elected Presidency as a nonpolitical office. It also seeks to endorse a governance

approach in which any overexuberant expectation of Singaporeans towards the Presidency is appropriately influenced and managed. In particular, that the presidential veto, when exercised, is not intrinsically political in form or in substance. Should the presidential veto be overridden by the executive-controlled Legislature, this legislative decision can also be characterized as non-political as well. However, things may not be so simple. Besides being an elected office, the custodial powers framework has the Council of Presidential Advisers playing a prominent role in the President's use of his veto powers.

4.3 Beefing up the CPA

Unsurprisingly, the third aspect of the Commission's review related to the role and composition of the Council of Presidential Advisers (CPA).[80] The CPA's primary function is to provide the President with the counsel of an independent body of experienced advisers when he exercises his discretionary custodial powers.[81] Although an unelected body, the CPA is an integral part of the Elected Presidency's framework of custodial powers. The President, Prime Minister, Chief Justice and the Public Service Commission Chairman nominate its members.[82]

The Commission noted that the CPA does not have the power to block the President but "plays a significant role in the balance between the President and the Government, where they disagree *on certain matters*".[83] It is this pivotal role the CPA plays in connection with the President's exercise of his discretionary custodial powers that is seemingly at odds with its advisory role and unelected status. The Commission also made the following important observations on the framework governing the President's discretionary powers and the CPA's role:

- The President should in general be advised by the CPA in the exercise of his custodial powers;[84]
- The "two-key" mechanism must be complemented by a political mechanism to resolve differences between the President and the Government;[85] and
- The Elected Presidency was neither intended nor designed to shift the locus of political power. In a situation of impasse, Parliament is the most suitable forum to decide whether the President's decision should be overridden.[86]

Congruent with its unelected status, the CPA has "no power of initiative" with its role "limited only to weighing in on the balance between the President and the Government".[87] Save for certain discretionary powers, the CPA is also Singapore's constitutional response, akin to a tiebreaker, to any potential logjam between the Government and the President on the use of national reserves and key public service appointments. Should the CPA's recommendation on a matter be at odds with the President's veto, Parliament can override the President if no fewer than two-thirds of the total number of Members of Parliament (excluding nominated Members) vote in support of such a resolution.[88] This "secondary role" of the CPA entails that it functions as an independent "counterbalance" should the President exercise his veto against a proposed action of the Government.[89]

The Commission's overall assessment was that the "reforms to the CPA do not appear to have kept pace with changes made to the Presidency".[90] To better aid the CPA in its primary role of advising the President, the Commission proposed additional measures to strengthen and refine the CPA's role and composition, which would augment the CPA's independence. Given the CPA's "pivotal role", the Commission recommended the refinement of the qualification criteria for a person to be appointed to the CPA but it resisted calls to raise the criteria.[91]

It recommended that constitutional provisions be enacted to require that certain matters be considered before a person is appointed to the CPA. These matters are: (1) A CPA member must be a person of "integrity, good character and reputation"; and (2) A CPA member "must have relevant expertise that will *inform the exercise of the President's powers*".[92] The Commission opined that the appointment of a CPA member should add to the CPA's "diversity of experience *as a collective body*, so that the CPA as a whole will possess the requisite breadth and depth of experience to better advise the President."[93] The Commission declined to advocate for more prescriptive eligibility criteria as this could result in the exclusion of members "who might otherwise potentially contribute valuable specialist knowledge to the CPA".[94]

To regulate how the CPA can directly influence and affect the parliamentary override, the Commission recommended a finely calibrated approach of requiring different levels of parliamentary override depending on the CPA's degree of support of the veto level.[95] The Government declined to accept this recommendation.[96] It was concerned that such an approach "may unintentionally emphasise or even politicise how individual members of the CPA, particularly its Chairman, had voted, instead of the collective judgment of the Council as a whole."[97] Mindful that the CPA is an unelected body, the Government reasoned that such a calibrated approach would inadvertently politicize how individual CPA members vote. It was concerned that the stature and independence of the CPA be maintained and that it should not descend into the political arena. Given the CPA's intimate connection with the President's exercise of veto powers, compromising the stature and independence of the CPA would detrimentally impact upon the Elected Presidency as well. The Government preferred the long-standing approach of a parliamentary override that is not determined by counting heads (or, the degree of support the President has from the CPA). This means that a parliamentary override is available to the Government where the President's veto was not supported by a simple majority of the CPA. Although adopting different approaches, it was clear that both the Commission and the Government did not wish to see the CPA become a power unto itself.

In the main, the Commission's review of the CPA's role resulted in recommendations to simplify, streamline and to promote consistency in the framework for the President's powers vis-à-vis the CPA. The Commission recommended, and the Government accepted, that the President be constitutionally required to consult the CPA before exercising his discretion in respect of all fiscal matters touching on Singapore's reserves and on all matters relating to key public service appointments.[98] The President's general duty to consult the CPA in the exercise of his custodial powers is now required under Article 37IA(1) of the

Constitution. However, the Commission and the Government were in agreement that the President does not need to consult the CPA in the exercise of his protective functions[99] and in the exercise of his historical discretionary powers.[100] As such, these powers are not subjected to a parliamentary override.

Prior to the 2016 constitutional amendments, the President was not obliged to consult CPA before exercising some of the custodial powers.[101] The Commission found this dichotomy in the President's obligation to consult "incongruous" as these matters "may have significant systemic impact and which, for that very reason, have (rightly) been subjected to Presidential oversight".[102] It also saw "no reason in principle" for these powers (and the appropriate scope of parliamentary override) to be treated differently. As such, the Commission recommended that the parliamentary override mechanism should be available so as to avoid the "potentially far-reaching consequences of a logjam affecting decision-making in these areas".[103]

In reviewing the size and structure of the CPA, the Commission made the case for augmenting the CPA with two additional members, one appointed by the President and the other by the Prime Minister. With the scope of parliamentary override expanding, the CPA's workload will increase, justifying the CPA comprising eight members.[104] There is a 1996 precedent when the CPA membership was expanded from five to six when the scope of the parliamentary override was widened. The Commission also expressed confidence that the appointers of CPA members "can be expected to exercise the requisite judgment as to the appointee's suitability and experience before making any nomination".[105] It also noted that CPA members are expected to exercise independent judgement, and not reflect the views of the office holder who had advised the President to appoint them.[106]

The changes to the CPA continue to reinforce the CPA's centrality in the Elected Presidency's framework of custodial powers. As a council of distinguished Singaporeans,[107] the CPA is an important resource and advisory body for the President. The Commission noted that the prospect of impasses was inherent in a system of checks and balances.[108] As such, where an independent body of experts concluded that it could not agree with the President, the Commission concurred that the President's position on that issue "might warrant a second look in Parliament".[109] In the custodial powers framework system design, the Elected Presidency is not conceived nor is it institutionally designed as a locus of power unto itself. The Commission described the CPA's sum total role in rather modest terms of being "limited only to weighing in on the balance between the President and the Government".[110] In contrast, the White Paper went so far as to describe the secondary role of the CPA as a "check".[111] This understates somewhat the CPA's influential role in determining whether a presidential veto prevails or not against the Government. In 1990, the Select Committee had opined that the CPA would over time grow in importance and perhaps evolve into a Council of State.[112] In 1996, when Parliament was asked to widen the scope of the parliamentary override and the Chief Justice was empowered to nominate the sixth CPA member, the then Prime Minister Goh Chok Tong spoke of building up the CPA as "an independent body".[113]

Taken in totality, the latest set of changes, arguably, represents a subtle shift in the tripartite relationship between the Elected President, the CPA and the Legislature. With more of the President's discretionary powers subjected to consultation with the CPA, the CPA's reach appears to be augmented in the latest constitutional review. However, concerns that the CPA is the real power behind the Presidency are exaggerated, and may be mistakenly premised on the view that the Elected President, given his electoral mandate, should be able to exercise his discretionary custodial powers without having to consult an unelected body or for Parliament being able to override a presidential veto.

However, Singapore's system of government remains quintessentially a parliamentary one in which the Cabinet led by the Prime Minister exercises significant grip on executive policy- and decision-making and the day-to-day running of the Government and country. Parliament is the "most important deliberative body"[114] in Singapore and "remains the most suitable forum to decide whether the President's decision should be overridden".[115] Overriding the presidential veto is not without its political risks to the Government of the day. The Commission captured the dynamics of the use of the parliamentary override well:

> The Government must therefore run a political risk should it decide to invoke the Parliamentary override mechanism, as it would have to publicly justify its case for overriding the President's decision and also respond cogently to the arguments raised in opposition to the Government's proposed course of action. If the requisite majority in Parliament is not convinced by the proposal to override the President's decision, the Government will have to bear the political cost of failing to secure the support of Parliament. This ensures that the Government will not lightly invoke the Parliamentary override mechanism and ensures the enduring efficacy of the second key as a safeguard mechanism. It is further strengthened by the existing requirement that a Parliamentary override has to be passed by a super-majority of two-thirds instead of a simple majority.[116]

The parliamentary override mechanism is a political tiebreaker that has to be wielded carefully, even where the Government of the day commands an overwhelming majority in Parliament. There could be potential significant downsides in initiating parliamentary scrutiny, which in turn would invite public scrutiny and debate on the impasse between the Government and the Elected President.[117] Thus, even with the CPA weighing in on the balance between the President and the Government, the Government has to strategically assess on a case-by-case basis, whether it would be prudent to bring the matter to Parliament to resolve the impasse.

Notwithstanding Lee Kuan Yew's tight grip on the Government during his tenure as Prime Minister (1959–1990), Singapore's system of governance is not reposed on the standing of one person, despite the Prime Minister as *primus inter pares*. By the same token, arguments for the CPA not to get in the way of the Elected President's veto and so risk a parliamentary override cannot but misconceive the manner in which political power, authority and accountability are structured in Singapore. More pointedly, the Elected Presidency, even in its

halcyon days when it was touted as a powerful check on the Government, was never designed to supplant the elected Government of the day. Hence, it should not come as a surprise if the (mis-)perception is that the Elected President's custodial powers framework accords significant weight to the CPA to the extent that the President's powers may even be clipped. In making its recommendation on any matter that the President has to consult the CPA, the CPA's ability to set in motion a potential parliamentary override hinges on the President exercising his veto in the first place and it not being aligned with the CPA's recommendation. Put simply, the CPA's role is reactionary and its recommendations do not nullify the presidential veto or prevent the President from exercising his veto in the first place.

To summarize, the 2016 constitutional amendments strengthen the CPA on various fronts. First, the President has a constitutional duty to consult the CPA on all fiscal matters and key public-sector appointments. Second, the CPA increase in its membership, from six to eight, provides it with additional expertise and perspectives to assist the President. Third, the qualification criteria for CPA members were refined in a non-prescriptive way. There were also refinements to the quorum requirements for council meetings[118] as well as staggering the terms and appointment cycles for appointments of CPA members to promote continuity and stability.[119] Additionally, general precepts were provided to guide the President, Prime Minister, Chief Justice and the Public Service Commission chairman for appointments to the CPA. The intent of these refinements seek to enhance the workings of the CPA and to bolster the standing and ability of the CPA to advise the President in his exercise of the discretionary custodial powers. These changes are, nevertheless, more refinements than a substantive reworking of the CPA.

With the latest changes, the custodial powers of the Elected Presidency remain the same even if the instances of the President's general obligation to consult the CPA (and the scope of the parliamentary override) are increased. There is little basis to regard the custodial framework of the Elected Presidency as being a hybrid one comprising the Elected President and the unelected CPA, or even of the CPA being more powerful than the President. The reality remains that the presidential veto, and whether to exercise it, rests entirely with the Elected President. The responsibility and prerogative to challenge the Government resides steadfastly and solely with the President. The President is not obliged to accept the CPA's recommendation (even if the parliamentary override is consequently triggered); he has the final say where the exercise of custodial powers are concerned. In short, the CPA is not another locus of power that competes with the President. Neither is the CPA able to clip the wings of the Elected President who is determined to press the case for his veto. Given that the President is popularly elected, the mandate to decide is far more recognized, accepted and weightier than the unelected CPA.

To be sure, it is the CPA's recommendation that is not aligned with the presidential veto that potentially triggers a parliamentary override. From the inception of the Elected Presidency, the institution design is configured on the basis that the CPA will steward the breaking of any impasse between the Government and the President. In this regard, the CPA is the intervening

mechanism rather than a check on the Elected President. The 2016 review of the Elected Presidency does not sharpen but clarifies the intervening sinews of the CPA. The locus of the custodial powers resides firmly with the Elected President.

The "constitutional balance" would have shifted should the CPA drive the exercise of the presidential custodial powers or the President places "excessive reliance on the CPA to make the relevant judgments" when such powers are implicated.[120] This would, as the Commission noted, be "inimical to the framework contemplated in the Constitution, because it will vest considerable power in the hands of an unelected body of members".[121] Regardless of whether the veto prevails or not, the contentious matter is not unilaterally decided by the Cabinet or the President or Parliament. Criticisms of the Elected Presidency hinges on the "pivot" that the CPA is in breaking the impasse between the parliamentary executive and the presidential executive. Depending on whether its recommendation is aligned with the presidential veto or not, parliamentary override may not be invoked. In short, it is not so much whether the veto prevails or not but how the contentious matter is resolved that highlights the saliency of the check and balance on executive decision-making.

At the same time, the CPA as the pivot vis-à-vis the override of the presidential veto may be rationalized on the basis that the CPA collectively has more technocratic ability. It is to be expected that the CPA collectively wields more technocratic ability than the Elected President. After all, the CPA members are appointed on the basis of and for their expertise, experience and judgement. In this regard, a direct comparison of the Elected Presidency and the CPA is somewhat meaningless since they perform separate but interdependent functions within the custodial powers framework.

The Elected President's custodial powers framework is by no means perfect. However, the Elected President office's relevance to good governance is best demonstrated when the Elected President and CPA agree or differ with each other on a principled basis. For instance, if the President exercises his veto and it is aligned with the CPA's recommendation, the Government is "thwarted" since Parliament cannot even override the presidential veto in such a scenario.

Similarly, if a simple majority of the CPA recommends against a presidential veto, a logjam is averted if Parliament overrides the veto with a two-thirds majority. Alternatively, the Government may not seek to have Parliament override the presidential veto. In all these instances, the deliberative process of the custodial powers framework is clearly brought into motion as the tripartite partners in the custodial powers framework are engaged with the issue and with the stakeholders.

Just as the eligibility criteria for presidential candidates emphasizes financial and management nous, this theme is repeated for the CPA as well. The CPA provides advice in connection with matters that the President exercises custodial powers. However, in other key areas of the President's discretionary power in relation to the exercise of his protective functions, namely, restraining orders under the Maintenance of Religious Harmony Act, detention under the Internal Security Act and corruption investigations by the Corrupt Practices Investigation Bureau, the President may consult but is under no legal duty to consult the CPA.[122] In these areas, other bodies such as the Internal Security Act advisory board and the

Presidential Council for Religious Harmony advise the President.[123] Similarly, the CPA may or may not advise the President on matters pertaining to the President's community and ceremonial functions.

Thus, it should come as no surprise that while the President's functions and roles can be broadly categorized into custodial, ceremonial and community ones, there is a hierarchy of discretionary powers.[124] At the apex is the set of discretionary powers primarily related to his custodial powers where the CPA must be consulted, such as the drawdown of national reserves and key public-sector appointments.[125] This is followed by discretionary powers for which the President may consult the CPA,[126] and where the President is advised, as required by the relevant legislation, by a relevant public body.[127] Finally, there are the discretionary powers where the President has historically acted on his own discretion.[128] The CPA is therefore constituted and more directly connected to the President's custodial functions than other functions. This reflects the importance of the President having the benefit of the advice of the CPA while also subjected to the CPA's weighing in on the balance between the Government and the President should there be a disagreement.

Notwithstanding the above, the CPA's role and advisory jurisdiction is likely to grow. The extent remains unclear. However, one area where the President will likely be required to consult the CPA is the entrenchment of specific constitutional provisions. The purpose in entrenching the Elected President provisions is, *inter alia*, to protect against the abolishment of the Elected Presidency and to "safeguard potential curtailment or circumvention of the President's discretionary powers", specifically over the national reserves and key appointments.[129] The Commission had noted that the indefinite suspension of the entrenchment framework may not be appropriate, and suggested that the Government decides "whether to bring these provisions into force or repeal them in whole or in part".[130] The Commission refrained from taking a view on whether entry into force or repeal of the relevant provisions would be preferable. The Commission emphasized that this was ultimately a matter for political judgement – suggesting that polycentric considerations were involved which the Executive is best placed to work through them.

The Government acknowledged the Commission's view that it was not desirable to have an entrenchment provision held in abeyance indefinitely.[131] Entrenching key constitutional provisions would also provide for stability as well. The Government noted that the entrenchment framework did not accord any constitutional or legal weight to the advice and recommendations of the CPA. In short, "the weight accorded to the President's position on amendments to entrenched provisions does not depend on whether he has the Council's support".[132] For now, the Government opted to repeal the previous entrenchment provisions but did not introduce a new entrenchment regime in their place. The Government indicated that it intended to introduce a:

> recalibrated entrenchment framework that aims for a workable balance between preserving the adaptability of the Constitution to changing circumstances, and providing adequate stability through sufficient rigidity in

entrenched areas. *The revised framework will also accord appropriate weight to the advice and recommendations of the Council.*[133]

What this means is that the CPA will play a vital and instrumental role in the further development of the Elected Presidency when the recalibrated entrenchment framework is enacted and brought into force. The Government did not commit to any timeline. With the 2016 review done and changes implemented, the Government indicated that testing and fine-tuning the revised framework will take time. It prefers "to let some time pass, see how the institution works over time, before entrenching".[134] For now, the various provisions on the Elected President can be amended by Parliament where it has been supported by not less than two-thirds of the total number of Members of Parliament (excluding nominated Members) on Second and Third Readings of the amendment bill.[135]

4.4 Implementing the raised bar

4.4.1 Consequential legislative amendments

Beyond the changes to the substantive eligibility criteria for presidential hopefuls, the consequential amendments to the Presidential Elections Act in February 2017 drew to a close the latest round of changes to Singapore's political system to entrench "good politics and leadership".[136] One procedural change was providing more time for prospective candidates to apply for the Certificate of Eligibility and for the Presidential Elections Committee to assess such applications. Another was to make provision for the Community Committee and its SubCommittees for the Chinese, Malay and Indian and other minority communities to operationalize the hiatus-triggered reserved election mechanism. There were also efforts to improve the election process, including making it more convenient for overseas Singaporeans to register to vote overseas, and the use of a clearer demarcated area on the ballot papers for the voter to indicate his choice of candidate to reduce disputes during the ballot counting process. The law was also changed to provide for the automatic recounting of votes when the difference in votes polled by the top two candidates is 2 per cent or less. Previously, such candidates had to apply for a recount.[137]

4.4.2 Consequential non-legislative changes

Besides these amendments, the debate in Parliament in February 2017 was more notable for the announcement of the non-legislative changes to the presidential elections. The first was the attempt to clearly differentiate the campaigning for the presidential election from the parliamentary election. The Commission noted, "the election process has the potential to become politicised and highly divisive".[138] Given the fundamental differences between the presidential elections and the parliamentary elections, the Government decided that the framework for the presidential election should be non-political and in keeping with the nature of the office as a non-partisan and unifying institution. The new approach encourages the

use of platforms and channels that reach out to voters at a national level and which are also more remote in nature. For instance, specific sites for campaign rallies will no longer be designated. However, presidential candidates can still hold rallies if they so wish. They will have to secure the venues themselves, and the requisite police permits. Instead of the outdoor rallies, the preference now is to provide more airtime on television as the Government sought to have candidates shift to television as the primary medium for voter outreach. The use of social media and indoor meetings of targeted group of voters will continue.

These changes come on the back of the combative 2011 Presidential Election, characterized by candidates and voters alike having competing and conflicting visions of the Presidency, which were often at odds with the clear powers of the Elected President provided for in the Constitution.[139] Rallies were seen as being neither necessary to electing a Head of State with custodial, ceremonial and community roles nor were they seen as being helpful in dealing with the divisiveness that often accompanies electoral contests where political parties and candidates alike compete on ideas, policies and ideologies. In its report, the Constitutional Commission stated that: “Presidential candidates should be required to conduct their campaigns with rectitude and dignity as befits the office and comports with the unifying role and purpose of the Presidency.”[140] The Government fully agreed, stating that campaigning for the presidential election had to be consistent with the President’s status and standing as a symbol of national unity.[141] The Government views presidential elections as polls contested on a national level and not on a local constituency level. Even if they should be competitive, a presidential election should not degenerate into a popularity contest or a political one in which candidates may engage in “constitutional overreach” in order to secure ballots to win. To this end, presidential candidates now have to explicitly declare that they understand the constitutional role of the President before they may be issued a Certificate of Eligibility, in the form of a statutory declaration contained within the application form for the Certificate of Eligibility.[142]

It would appear that the overall approach to the conduct of the presidential election takes its bearings from the *sine qua non* of the President as a symbol of national unity. It is also more in sync with an elitist approach, with a tinge of paternalism, in which the candidates (as elites) and the electorate alike are required to contest within specified confines so as not to descend to an undignified and combative contest that undermines the office of the Elected Presidency and the eventual winner of the presidential poll as President.[143] This also points to the inherent difficulty of reconciling two competing, if not conflicting, imperatives. On the one hand, there is the political imperative to invest the elected office with the requisite mandate and authority and legitimacy to challenge the Government of the day. On the other hand, there is the moral imperative of not debasing the office through a bruising electoral contest especially when the prospective candidates are very likely to hail from the elite class in Singapore society.[144] The Singapore approach points to the bold effort to square the circle – that of having meritorious individuals elected to serve as the President but yet not engaging in the kind of electoral campaigning and behaviour that the public is accustomed to and

expects of any competitive poll. As the White Paper put it forthrightly, "a custodial President democratically elected in a national election remains the most workable and effective solution for Singapore for the present".[145]

In a similar vein, another non-legislative change resorted to was the "re-set" of the timing of the presidential election, which had always been held in August every six years since the inaugural presidential election in 1993.[146] The Government explained that this was to avoid the election campaigning coinciding with the National Day celebrations in August each year. Consequently, the fifth presidential election was held in September 2017 instead of August 2017. On this, the Government agreed with the Commission that a clear distinction ought to be drawn in the campaign methods for presidential elections and parliamentary elections. "Campaign methods for the Presidential Elections must not inflame emotions and must be in keeping with the decorum and dignity of the office of the President, given the important unifying and custodial roles of the President."[147] In other words, presidential election campaigning should be depoliticized for the good of the office. To what extent this would help remains to be seen. The country would very much be in election mode even if the election were to be held in September since the main electoral activity in the three months leading to the September poll would be the presidential election.

Besides the legislative changes, Parliament's Standing Orders were amended in May 2017 to improve the parliamentary procedures relating to the Elected Presidency.[148] Under the Constitution, Parliament can overrule a presidential veto that is contrary to the recommendation of the Council of Presidential Advisers. The Standing Orders now require both the President's grounds and the CPA's recommendation to be made available to Parliament at least two days before the motion proposing to overrule the President is debated in Parliament. This is after the Speaker of Parliament has determined and is satisfied that the President's decision in the exercise of his custodial powers was in fact contrary to the CPA's recommendation.[149] Before overruling a presidential veto, the issue must be carefully studied and debated robustly by Parliament. Such an overruling must be done on a principled basis and should have the support of Singaporeans. Otherwise, Parliament's overruling of a presidential veto can be divisive. In this regard, the requirement of a minimum of two days to study the documentation is too parsimonious to fully consider a contentious and weighty issue where public opinion may be split.

4.4.3 More haste, less speed?

Parliament passed the constitutional changes to the Elected Presidency in November 2016. With that, the most significant change to Singapore's Constitution, since the establishment of the Elected Presidency, took less than 12 months from the President's Address at the opening of the thirteenth Parliament in January 2016. In contrast, prior to that the establishment of an "intra-branch check" on the Executive in 1991, the matter of having an intra-branch check was debated at length for at least six years. The 2016 review seemed to have proceeded with relative speed, if not haste. Even as it ramped up its engagement efforts, persuading

people that the changes were necessary and not a knee-jerk reaction to the divisive 2011 Presidential Election would take time. Why did the Government not conduct the review earlier between 2011 and 2015? The timing and implementation of the revised eligibility criteria and the reserved election mechanism were crucial. The Government decided to implement them with immediate effect in the 2017 Presidential Election.

While change was needed in due course, the Elected Presidency framework had not irretrievably broken down such that it was in dire need of urgent changes. Implementing the changes in the subsequent election in 2023 would provide more opportunities to further engage Singaporeans. It would not put the Presidency, the Government and Singapore in a worse-off position. This would also be aligned with Singapore's long-standing approach of incremental political change, rather than dramatic changes. It should be emphasized that the previous eligibility criteria were not seen as severely lacking and urgently in need of fixing.[150] And it is also unlikely to be the case that the Elected Presidents had not been equal to the task, requiring urgent changes. This in no way suggests that change was not needed but rather that when to implement the changes matters as much, if not more.

Any change even if it could be justified on rationale and principle must also satisfy the requirement of fairness. This would have reduced the possibility the changes to the eligibility criteria being unnecessarily policiticized.[151] As it turned out, when Parliament made the necessary constitutional changes to the Elected Presidency in November 2016, it was less than twelve months to the 2017 Presidential Election. Although Parliament can amend the eligibility criteria as it deems fit, the impact of any expedient, if not hurried, change would have on the electorate's perception as to the true nature of the review process seemed to be of much less importance.[152]

Moreover, could the changes to the eligibility criteria apply perhaps in the subsequent election, given that changing the rules of the game so late in the presidential electoral cycle would upset legitimate expectations? This would have avoided unnecessarily politicizing the election for a non-partisan office. The changes that the Government made were very substantive ones. Good engagement is not just about intensity but also being patient and persuasive. Singaporeans not only needed time to digest the proposed changes but, more importantly, to be assured that the extent of the changes were necessary and, on balance, would be beneficial to Singapore and Singaporeans.

Rationalizing the changes was the easy part. The Commission and the Government had presented a cogent and persuasive case. However, if the changes were perceived to be hurried through, then the opportunity of sustained engagement and buy-in was less likely. This apparent haste could have resulted in the lack of sustained and patient engagement on the necessity and timing of the changes. Even if the Government held a deep conviction of the necessity and correctness of the changes, the perceived haste with which it effected the changes did not work in favour of the august office of the Elected President. The impact of a hasty engagement of Singaporeans could have affected the legitimacy of the proposed constitutional changes. Further, if Singaporeans were not persuaded, this made it susceptible to conspiracy theories on the *raison d'être* and urgency of the

changes. The timing of the implementation of the changes, specifically the combined effect of the enhanced eligibility criteria and the reserved election, rightly or wrongly, breathed life to conspiracy theories that the review and rapid changes were a reaction to the hotly contested and divisive 2011 Presidential Election. This, unfortunately, detracted from the constitutional review, which sought to further perfect Singapore's system of governance.

4.5 Conclusion: elites to the fore, keeping elitism at bay

In the 2017 Presidential Election, which was the first to utilize the enhanced eligibility criteria and the reserved election, only Madam Halimah Yacob, a former Speaker of Parliament (2013–2017) and PAP legislator (2001–2017), obtained a certificate of eligibility via the automatic qualification route for public-sector office holders. This outcome was not surprising at all. On the financial expertise requirement, the other two applicants, namely, Mr Mohamed Salleh Marican and Mr Farid Khan, had to take the more uncertain private-sector deliberative track. Based on the media reports, the companies they led were considerably smaller than the $500 million shareholders' equity that is stipulated in the Constitution. The Presidential Elections Committee ("PEC") was not going to and cannot bend backwards – that would be acting arbitrarily and unlawfully. Contrast this with the online chatter that the PEC could have "bent the rules" to let the other aspirants stand so that the first reserved presidential election would not go uncontested. However, this view stemmed from a fundamental misunderstanding of what the eligibility criteria are supposed to serve and a lack of recognition of the dangers that come with the PEC acting arbitrarily in order to satisfy public expectation.

The Elected President institutional innovation was itself borne out of the nagging fears of a "rogue government" ruining Singapore through profligate spending and unmeritorious key public office appointments. Twenty-five years after its establishment, it was timely to review the institution. Arguably, the substantive changes to the institution in 2016 were ostensibly motivated by the desire to reduce the likelihood of a "rogue president" from upending the parliamentary system of government and to enhance the office as a symbol of national unity. The institution continues to be a work in progress with the latest changes being the most comprehensive and substantive since the Elected Presidency was first introduced.

Like the 1991 changes, the latest changes seek to enable the PAP Government to manage the pace of political change without being dictated to. The adaptation of political institutions and processes is seen as being necessary for Singapore's political survival and prosperity, with a group of elites to develop and shape them to fit the peculiar needs of Singapore. This dovetails with the abiding belief in the 'Singapore way': a model of development that is coterminous with her history, societal values and development objectives, distinct from prevailing Western norms.

Beyond trying to have Presidents from the different races on a regular basis, the review of selected aspects of the Elected Presidency was significant and underlined the idealistic impetus to perfect Singapore's system of governance. It was an

ambitious attempt on the part of the Government to "fool proof" Singapore's political governance, promote good governance as well as further promote multiracialism. Central to this institutional design is the importance of good and capable men (and women) to complement good institutions in the quest to sustain good governance. The focus of 2016 review was very much on ensuring that those who seek to be the Elected President, as the constitutional custodian of good governance, have what it takes to keep the Singapore system good and strong. The thinking is that such a talent pool is necessarily limited and pre-qualification of those seeking to become the Head of State is therefore required.

The review of the Elected Presidency in its core aspects confirms that the office is designed to be an elite institution with eligibility restricted to a select group by stringent criteria. The changes to the Council of Presidential Advisers following the constitutional review underscore this critical thrust of having good men and women to support and counsel Singapore's Head of State. It plays a critical role in ensuring that the presidential veto is not exercised without the President having the benefit of the advice and recommendation of his advisers. Clearly, the custodial powers framework of the Elected Presidency institutional design indicates the preference for a highly structured and conservatively calibrated intra-branch check on the Executive. The substantive and procedural changes to the Elected President institution underscore the conscious effort to buttress the understanding that the Elected Presidency is not a locus of power unto itself. Ultimately, the elite governance embodied in the custodial powers framework has to conscientiously manage the possibility of it being seen as an elitist institution. An elitist mode of governance will not be in sync with the Elected Presidency as a symbol of national unity. The ruling PAP's political dominance notwithstanding, the pressure is on the evolving institutional design to become more inclusive, representative, equitable and fair, in tandem with the growing democratic aspirations of Singaporeans.

Notes

1 In the official discourse, especially after 1999, the Elected President is described as having custodial powers rather than executive powers. The intent is not only to differentiate the President's powers from the Cabinet's but also to clarify that the President has no executive powers.

2 Article 24 of the Singapore Constitution (1999 Reprint) (hereinafter referred to as "the Constitution"). Article 23(1) states that: "The executive authority of Singapore shall be vested in the President and exercisable subject to the provisions of this Constitution by him or by the Cabinet or any Minister authorised by the Cabinet."

3 In a crowded race with four candidates and coming on the back of the polarizing General Election in May 2011, the August 2011 Presidential Election was characterized by competing and, at times, conflicting visions of the Presidency. Some candidates showed little regard for the constitutional limits of the presidential office and over-promised what they would do if elected. For instance, one candidate ran his campaign on the platform of being the "voice of the people" while another sought to be the "moral compass", the "conscience" of the nation.

4 Articles 23(1) and 38 of the Constitution.

5 See, further, Eugene K.B. Tan, "Autochthonous Constitutional Design in post- colonial Singapore: intimations of Confucianism and the Leviathan in entrenching dominant government" (2013) 4(2) *Yonsei Law Journal* 273–308.

6 For recent evaluations and critiques of the NMP and/or GRC schemes, see Garry Rodan, *Participation without Democracy: Containing Conflict in Southeast Asia* (Ithaca, NY: Cornell University Press, 2018); Netina Tan and Bernie Grofman, "Electoral rules and manufacturing legislative supermajority: evidence from Singapore" (2018) 56(3) *Commonwealth and Comparative Politics* 273–97; Jaclyn L. Neo, "Navigating minority inclusion and permanent division: minorities and the depoliticization of ethnic difference" (2017) 17 *Jus Politicum* 607–27; Walid Jumblatt Abdullah, "Electoral innovation in competitive authoritarian states: a case for the Nominated Member of Parliament (NMP) in Singapore" (2016) 17(2) *Japanese Journal of Political Science* 190–207.

7 The Prime Minister's speech is available online: PM Lee Hsien Loong, *Singapore Parliamentary Debates: Official Report*, 27 January 2016, vol. 94; and at PM Lee Hsien Loong, "PM Lee Hsien Loong at the debate on President's Address on 27 January 2016", *Prime Minister's Office Singapore* (27 January 2016) www.pmo.gov.sg/mediacentre/pm-lee-hsien-loong-debate-presidents-address-27-january-2016 (accessed 31 August 2018).

8 Singapore's founding Prime Minister Lee Kuan Yew argued that good government was what people want and that cultural values played a constructive role in deciding the political norms of a society; see Han Fook Kwang, *et al*., *Lee Kuan Yew: The Man and His Ideas* (Singapore: Singapore Press Holdings & Times Editions, 1998), 380.

9 *White Paper on shared values* (Cmd 1, 1991), para. 41.

10 For an elaboration of the classical understanding of the Confucian *junzi*, see W. Theodore De Bary, *The Trouble with Confucianism* (Cambridge, MA: Harvard University Press, 1991).

11 See the White Papers of 1988 and 1990: *Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services* (Cmd 10, 1988), and *Safeguarding Financial Assets and the Integrity of the Public Services: The Constitution of the Republic of Singapore (Amendment No 3) Bill* (Cmd 11, 1990).

12 Constitutional Commission, *Report of the Constitutional Commission 2016* (2016), para. 4.6. The Constitutional Commission's report is abbreviated in this chapter as "CCR" from hereon.

13 CCR (n. 12), para. 4.12.

14 CCR (n. 12), para. 4.18.

15 See Prime Minister's Office, *White Paper on the Review of Specific Aspects of the Elected Presidency* (2016), para. 29(c)(iv). This White Paper is abbreviated as "WP" henceforth.

16 WP (n. 15), para. 29(c)(v).

17 CCR (12), paras 4.45–4.48; WP (n. 15), para. 29(c)(v)(A) to 29(c)(v)(B).

18 WP (n. 15), para. 29(c)(v)(C).

19 See WP (n. 15), 8. (Fourth column is added by the author.) 20 CCR (n. 12), para. 4.12.

21 CCR (n. 12), para. 4.16.

22 CCR (n. 12), para. 4.12.

23 CCR (n. 12), para. 4.12.

24 CCR (n. 12), para. 4.13.

25 CCR (n. 12), para. 4.13.

26 CCR (n. 12), para. 4.14.

27 CCR (n. 12), para. 4.17.

28 CCR (n. 12), para. 4.7. For the requirements to be appointed Prime Minister, see Articles 44 and 45, read with Article 25 of the Constitution.

29 CCR (n. 12), para. 4.8. See also CCR (n. 12), paras 4.9–4.10.

30 CCR (n. 12), para. 4.18. At para. 21, the Commission noted that:

> Quantitative thresholds cannot remain fixed in perpetuity for the self-evident reason that the economic situation in a country, or, for that matter, even the value of money in real terms, does not remain static. A quantitative threshold set some decades ago is simply unlikely to be meaningful today.

31 The Commission stated at para. 4.27 of the CCR that the number of surviving persons who have, since January 2001, held one or more of the qualifying publicsector offices (excluding former Auditors-General and Accountants-General) for at least three years is "around or just over 70".

32 Article 18 of the Constitution read with Section 8 of the Presidential Elections Act (Cap. 240A) (hereinafter referred to as "Presidential Elections Act").

33 CCR (n. 12), para. 4.22.

34 CCR (n. 12), para. 4.22.

35 CCR (n. 12), para. 4.31.

36 CCR (n. 12), para. 4.43.

37 CCR (n. 12), paras 4.49–4.62.

38 CCR (n. 12), para. 4.52.

39 CCR (n. 12), para. 4.54.

40 CCR (n. 12), paras 4.56–4.62. The original minimum threshold was $100 million in paid-up capital.

41 CCR (n. 12), para. 4.59.

42 CCR (n. 12), para. 4.59. 43 CCR (n. 12), para. 4.60.

44 See, generally, CCR (n. 12), paras 4.63–4.65.

45 CCR (n. 12), para. 4.63.

46 See generally CCR (n. 12), paras 4.63–4.65.

47 CCR (n. 12), para. 4.58.

48 CCR (n. 12), para. 4.57. The Commission did not consider whether all the publicsector offices that provide automatic qualification would adequately equip the office holders with such a skillset. For a perspective on what such decisions entail, see S.R. Nathan with Timothy Auger, *An Unexpected Journey: Path to the Presidency* (Singapore: Editions Didier Millet, 2011), 620–7. The 2008–2009 global financial crisis pushed Singapore into its worst recession. President Nathan was called on to make a landmark decision on whether the Government could draw on the national reserves. In October 2008, he agreed for the reserves to be used to back deposits in Singapore's commercial banks, merchant banks and finance companies to prevent a run by investors spooked by the collapse of financial institutions elsewhere, including the United States. Then in early 2009, he agreed to draw $4.9 billion from the reserves to fund schemes to save jobs and ease credit for companies in Singapore.

49 CCR (n. 12), paras 4.66–4.67; WP (n. 15), para. 44.

50 CCR (n. 12), para. 4.67.

51 CCR (n. 12), paras 4.66.

52 CCR (n. 12), para. 4.19(a).

53 CCR (n. 12), para. 4.19(b).

54 Article 19(3)(a) and (b) of the Constitution stipulates that the public-sector service requirement is that the person has held office for a period of three or more years as Minister, Chief Justice, Speaker, Attorney-General, Chairman of the Public Service Commission, Auditor-General, Accountant-General or Permanent Secretary, or served for a period of three or more years as the chief executive of an entity specified in the Fifth Schedule.

55 CCR (n. 12), para. 4.27.

56 CCR (n. 12), para. 4.28 *cf.* WP (n. 15), paras 34–35.

57 CCR (n. 12), para. 4.28. The phrase, "contrary pulls and pressures of government decision-making", was taken from the first White Paper on the Elected Presidency,

Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Service (Cmd 10, 1988), 29 July 1988, para. 18(d).

58 The Government stated that it would like to consider this recommendation more carefully: WP (n. 15), para. 35.

59 CCR (n. 12), para. 4.25. The Commission was responding to the point that not all applicants who qualify through the public-sector route may have managed organizations of considerable size as compared to those qualifying under the private-sector route.

60 CCR (n. 12), para. 4.25.

61 CCR (n. 12), para. 4.29.

62 CCR (n. 12), paras 4.36–4.37.

63 CCR (n. 12), para. 4.30.

64 CCR (n. 12), para. 4.32.

65 CCR (n. 12), para. 4.33 (original emphasis).

66 CCR (n. 12), para. 4.33.

67 CCR (n. 12), paras 4.34–4.73.

68 CCR (n. 12), para. 4.72; see also CCR (n. 12), para. 4.34.

69 WP (n. 15), paras 53–4.

70 WP (n. 15), para. 53.

71 WP (n. 15), para. 58.

72 CCR (n. 12), para. 4.75.

73 WP (n. 15), para. 59.

74 WP (n. 15), para. 59.

75 See WP (n. 15), paras 126–43.

76 The vast majority of the constitutional changes in the last 25 years have centred on the institution of the Elected Presidency. The Constitutional Commission had recommended that the Government make a definitive decision on entrenchment. This is discussed in the CCR (n. 12), paras 7.20–7.31.

77 Prior to the constitutional review in 2016, to amend or repeal an entrenched provision required the support of two-thirds of voters at a national referendum. Note, however, that the constitutional provisions on the Elected President were never brought into force and were held in abeyance for 25 years before being repealed.

78 Judgement, wisdom and empathy are harder to measure, and may defy measurement in the objective sense.

79 See Section 4.4 of this chapter for non-legislative changes adopted.

80 Constitutional provisions relating to the CPA are found in Part VA of the Constitution.

81 Article 37I of the Constitution. The Commission described the CPA as "primarily a body of independent specialist advisors": CCR (n. 12), para. 6.37.

82 Articles 37B and 37C of the Constitution.

83 CCR (n. 12), para. 6.1 (original emphasis).

84 CCR (n. 12), para. 6.1.

85 CCR (n. 12), para. 6.5.

86 CCR (n. 12), para. 2.59.

87 CCR (n. 12), para. 6.7. The Commission added that the CPA is "not an office with ceremonial or symbolic significance": CCR (n. 12), para. 6.37.

88 See Article 37IF of the Constitution generally.

89 CCR (n. 12), para. 6.38.

90 CCR (n. 12), para. 6.1.

91 CCR (n. 12), paras 6.33–6.34.

92 CCR (n. 12), para. 6.35(b) (original emphasis). These are now enacted in Article 37D(2)(a) and (b) of the Constitution.

93 CCR (n. 12), para. 6.35(c) (original emphasis).

94 CCR (n. 12), para. 6.36.

95 CCR (n. 12), paras 6.38–6.45. This also takes into account the extent to which the CPA supported or opposed the presidential veto.
96 WP (n. 15), paras 100–105, especially para. 103.
97 WP (n. 15), para. 103.
98 CCR (n. 12), paras 6.12–6.19; WP (n. 15), paras 90–93.
99 These are the President's discretionary powers in relation to the detention orders under the Internal Security Act, restraining orders under the Maintenance of Religious Harmony Act, and investigations by the Corrupt Practices Investigation Bureau.
100 These are powers that predate the introduction of the Elected Presidency and include the power to appoint or remove a Prime Minister and dissolving or denying a request to dissolve Parliament.
101 See helpful tabulation in CCR (n. 12), para. 3.7.
102 CCR (n. 12), para. 6.13.
103 CCR (n. 12), para. 6.13.
104 CCR (n. 12), paras 6.24–6.28 generally, and WP (n. 15), paras 106–8; See also Article 39B(1) of the Constitution. With the changes, the CPA now comprises three members appointed by the President in his discretion, three members appointed on the advice of the Prime Minister, and one member each appointed on the advice of the Chief Justice and the Chairman of the Public Service Commission.
105 CCR (n. 12), para. 6.34.
106 CCR (n. 12), para. 6.26.
107 It was only in January 2019 that the first woman was appointed to the CPA. Ms Chua Sock Koong was nominated and appointed as an Alternate Member of the CPA by President Halimah Yacob. For a listing of current and past CPA members, see The Istana, "Council of Presidential Advisers" (*The Istana*, 27 August 2018) www.istana.gov.sg/roles-and-responsibilities/presidents-office/council-presidential-advisers (accessed 3 September 2018).
108 CCR (n. 12), para. 6.5.
109 CCR (n. 12), para. 6.39. 110 CCR (n. 12), para. 6.7.
111 WP (n. 15), para. 87(d).
112 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No. 3) Bill* (Parl 9 of 1990, 18 December 1990) para. 31.
113 Prime Minister Goh Chok Tong, *Singapore Parliamentary Debates: Official Report*, 28 October 1996, vol. 66, cols 765–6.
114 CCR (n. 12), para. 6.11.
115 CCR (n. 12), para. 6.5.
116 CCR (n. 12), para 6.6.
117 CCR (n. 12), para. 6.9 and footnote 279; WP (n. 15), para. 111(b).
118 See Article 37IG of the Constitution.
119 See Article 37B of the Constitution.
120 CCR (n. 12), para. 4.17.
121 CCR (n. 12), para. 4.17.
122 See Article 37IA of the Constitution.
123 Under Article 151(4) of the Constitution, where an advisory board recommends the release of any person under any subversion of preventive detention law or ordinance (e.g. the Internal Security Act [ISA]), the person shall not be detained or further detained without the concurrence of the President, acting in his discretion, if the recommendations of the advisory board are not accepted by the authority (usually the Internal Security Department) on whose advice or order the person is detained. See also Sections 12, 13 and 13A of the ISA. Article 22I of Constitution states that 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 (MRHA)

where the advice of the Cabinet is contrary to the recommendation of the Presidential Council for Religious Harmony. See also Section 12 of the MRHA.

124 By pecking order, it is not suggested that the some discretionary powers are not important.

125 Article 37IA(1) of the Constitution.

126 Article 37IA(2) of the Constitution. See also Articles 25 and 21(2).

127 Article 21(5) of the Constitution.

128 Principally, Article 21(2) of the Constitution. See also Articles 37IA(2), 25 and 21(2) of the Constitution.

129 These provisions (previously Articles 5(2A) and 5A of the Constitution) were enacted in 1991 when the Elected Presidency was created but they were never brought into force. The White Paper explained that this was because the unique nature of the Elected Presidency meant that the flexibility to continually refine and tweak the system was needed: WP (n. 15), para. 126.

130 CCR (n. 12), para. 7.30. See also CCR (n. 12), para. 7.20–7.31. 131 See WP (n. 15), para. 134:

> The Government has therefore proceeded cautiously with regard to the of specific constitutional provisions, in recognition of the careful balance that must be sought between the adaptability of the Constitution to changing circumstances, and the stability afforded by a sufficiently rigid Constitution.

132 WP (n. 15), para. 139.

133 WP (n. 15), para. 140 (emphasis added). For details of the revised framework, see paras 140–2.

134 WP (n. 15), para. 143. The Government noted the previous wisdom of not entrenching the Elected President in the Constitution between 1991 and 2016:

> The fact that there are good reasons for revising the entrenchment provisions now shows that it was wise to have not entrenched them. Likewise, the question of when to bring into force the revised entrenchment provisions should be considered some period after the upcoming set of amendments have been in operation.

135 Article 5 of the Constitution. The ruling People's Action Party has commanded more than 90 per cent of elected parliamentary seats since the 1968 general election.

136 This is a recurrent theme in the Government's characterization of what is needed in the governance of Singapore. See the articulation in the President's Address in 2011, 2014, 2016 and 2018.

137 See Chapter 7 by Jack Tsen-Ta Lee in this volume.

138 CCR (n. 12), para. 4.14.

139 The Commission noted in the CCR (n. 12), at para. 7.11 that a parliamentary election is:

> a contest of ideas and policies, where candidates have to communicate their policies to the electorate and persuade voters as to the strengths of their own proposals as well as the weaknesses of those put forward by other candidates. This clash of ideas and policies makes for a lively but inevitably divisive contest.

140 CCR (n. 12), para. 7.11.

141 See Second Reading Speech on the Presidential Elections (Amendment) Bill 2017: *Singapore Parliamentary Debates: Official Report*, 6 February 2017, vol. 94; See also Elections Department Singapore, "Campaigning Guidelines for the Presidential Election" (*Press Release*, 29 August 2017) www.eld.gov.sg/pressrelease/PreE2017/Press%20Release%20on%20Campaigning%20Guidelines%20for%20the % 20Presidential%20Election.pdf (accessed 3 September 2018).

142 See Section 9(3)(c)(iii), Presidential Elections Act which requires a person seeking nomination to make a statutory declaration that: "he understands the President's role under the Constitution, including any particular aspect of the President's role stated in the prescribed form."

143 Given the stringent eligibility criteria which limits the pool to a group of public office and corporate elites and the non-combative nature of campaigning, I have described the presidential contest as one of the “battle of CVs”.

144 This has echoes of Shakespeare’s tragedy, *Coriolanus*. The following description is taken from an article by Ruth Franklin, “Revisiting Shakespeare’s “Coriolanus’ ” (*New York Times Magazine*, 20 January 2012) (hereinafter referred to as “NYTM article”), which captures well the challenge facing Coriolanus as he transits from soldier to politician in ancient Rome:

> After a military triumph in the city of Corioles, Caius Martius, a respected if not beloved general, is given a new surname – Coriolanus – to honor his achievement, and his friends urge him to stand for election as a senator. But the pride that propelled Coriolanus to triumph in the battlefield makes him reluctant to engage in the kind of vote-mongering niceties that the public expects.

Coriolanus captures well the dilemma of the Elected Presidency as a symbol of national unity but having the person to be chosen through competitive elections. As the NYTM article concludes,

> Perhaps every politician must have a bit of Coriolanus in him: an ego that propels him to believe himself worthy of public service, coupled with the desire to stand unswerving for the rightness of his own convictions. And yet a politician who wants to win must ultimately subdue his or her inner Coriolanus and “be other than one thing.” Victory depends upon a fickle combination of personal merit, political strategizing and the skillful application of flattery. We think of this as cynical and unsavory, a symptom of our own corrupt political climate. However, more than anything else, “Coriolanus” demonstrates that politics has never been pure – and that “May the best man win!” might be its most enduring myth.

The constitutional changes under discussion might suggest the intent to reduce the possibility of the presidential election becoming undignified.

145 WP (n. 15), para. 125; see also Chapter 7 by Jack Tsen-Ta Lee in this volume.

146 Article 17(2)(b) of the Constitution states that the election “must be held” not more than three months before the date of expiration of the term of office of the incumbent. This would mean any time between June and August in a presidential election year. With the advice of the Attorney-General, the Government, however, took the view that Article 22N of Constitution was applicable and could be resorted to in the plans to re-time the presidential poll. The Attorney-General was of the view that there could be an interval between the expiry of the incumbent’s term and the assumption of office by the new President: see Second Reading Speech by Minister Chan Chun Sing on the Presidential Elections (Amendment) Bill 2017 at *Singapore Parliamentary Debates: Official Report*, 6 February 2017, vol. 94. Article 22N(1) states that:

> If the office of President becomes vacant, the Chairman of the Council of Presidential Advisers 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 the person declared elected as President.

Note that Article 22N of the Constitution was inapplicable as the Presidency was not vacant at the relevant time. In this case, President Tony Tan’s term was allowed to lapse deliberately. The apparent incongruence between Article 17(2)(b) and Article 22N was not dealt with by the Government.

147 See Second Reading Speech on the Presidential Elections (Amendment) Bill 2017 at *Singapore Parliamentary Debates: Official Report*, 6 February 2017, vol. 94.

148 Standing Orders (hereinafter abbreviated to "SO") are the written rules of procedure that regulate Parliament's proceedings. Article 52 of the Constitution empowers Parliament to "make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business".

149 See SO 44A.

150 As Prime Minister Lee Hsien Loong recounted in January 2016, Mr Eddie Teo, chairman of the Presidential Elections Committee (2011 and 2017) and Public Service Commission chairman (2008–2018) had written to him after the 2011 Presidential Election recommending that the qualifying criteria for candidates to be president should be reviewed. Mr Teo had written that: "The criterion of $100 million paid-up capital … was set more than 20 years ago. It is, therefore, unclear whether or not with inflation, the threshold continues to reflect the original intent of the requirement." Mr Eddie Teo has been the Chairman of the CPA since January 2019.

151 There was also the legitimate expectation of presidential candidates who had obtained certificates of eligibility in previous Presidential Elections being rendered ineligible in the 2017 election. To be clear, this is not a matter of legitimate expectations under the law but one of not unnecessarily politicizing the changes to the Elected Presidency and the Presidential Election.

152 Popular coffee shop talk had it that the changes were designed to prevent Dr Tan Cheng Bock, who lost very narrowly in the 2011 Presidential Election, from contesting.