

# Constitution of the Republic of Singapore (Amendment) Bill

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**Bill No. 28/2016.**

*Read the first time on 10 October 2016.*

A BILL

*intituled*

An Act to amend the Constitution of the Republic of Singapore (1999 Reprint) and to make related amendments to the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996).

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

## Short title and commencement

1. This Act is the Constitution of the Republic of Singapore (Amendment) Act 2016 and comes into operation on a date that the President appoints by notification in the *Gazette*.

### 5 Amendment of Article 5

2. Article 5 of the Constitution of the Republic of Singapore (called in this Act the Constitution) is amended —

(a) by deleting the words “Article 8” in clause (1) and substituting the words “Articles 5A, 5B, 5C and 8”;

10 (b) by deleting the words “the elected Members of Parliament referred to in Article 39(1)(a)” in clause (2) and substituting the words “Members of Parliament (excluding nominated Members)”;

15 (c) by inserting, immediately after clause (2), the following clause:

“(2A) Clause (2) does not apply to a Bill to which Article 5A or 5B applies.”;

(d) by deleting clause (3) and substituting the following clause:

20 “(3) In this Article and Articles 5A, 5B and 5C, “amend” includes add to and repeal, and “amending” and “amendment” have corresponding meanings.”; and

(e) by deleting the Article heading and substituting the following Article heading:

25 “**Ordinary procedure for amending Constitution**”.

### New Articles 5A, 5B and 5C

3. The Constitution is amended by inserting, immediately after Article 5, the following Articles:

**“Procedure for amending certain provisions establishing office of President, etc.**

**5A.—**(1) Subject to clause (2), a Bill seeking to amend any of the provisions mentioned in clause (7) cannot be introduced in Parliament unless — 5

(a) the President, acting in his discretion, concurs with the introduction of the Bill; or

(b) the Government submits the Bill to a national referendum at which it is supported by more than half of the total number of votes cast by the electors registered under the Parliamentary Elections Act (Cap. 218). 10

(2) Despite a refusal by the President to concur with the introduction of the Bill, the Bill can still be introduced in Parliament if the Council of Presidential Advisers had recommended to the President that he should concur with the introduction of the Bill. 15

(3) Before the Government submits a Bill to a national referendum under clause (1)(b), the Government must, if the President’s concurrence for the introduction of the Bill was sought but refused, cause to be published in the *Gazette* both the President’s grounds as certified under Article 37IE(2)(a) and the recommendation of the Council of Presidential Advisers in relation to the introduction of the Bill. 20

(4) Before a Bill is introduced under clause (2), the Government must — 25

(a) cause the President’s grounds, as certified under Article 37IE(2)(a), to be published in the *Gazette*; and

(b) send the recommendation of the Council of Presidential Advisers in relation to the introduction of the Bill to the Speaker, who must present the recommendation to Parliament. 30

(5) After a Bill is introduced under clause (1)(a) or (b) or (2), it can only be passed by Parliament if it is supported on Second and

Third Readings by the votes of not less than two-thirds of the total number of Members of Parliament (excluding nominated Members).

5 (6) Subject to clause (5), if a Bill is introduced under clause (1)(b), the Bill can be amended during its passage through Parliament if the Speaker is of the opinion that the amendment is of a minor or purely drafting character or that the amendment does not affect the substance of the Bill that was supported at the national referendum.

10 (7) The provisions mentioned by clause (1) are —

(a) this Article and Articles 5B (except clause (9)) and 5C; and

(b) Articles 17(1) and (2), 17A, 20(1) and (2), 22K, 22L, 22N and 22O.

15 **Procedure for amending other provisions relating to office of President and certain discretionary powers of President**

20 **5B.**—(1) Subject to clauses (2) and (7), a Bill (other than a Bill to which Article 5A applies) seeking to amend clause (9) or any of the provisions mentioned in clause (9) cannot be introduced in Parliament unless —

(a) the President, acting in his discretion, concurs with the introduction of the Bill; or

25 (b) the Government submits the Bill to a national referendum at which it is supported by more than half of the total number of votes cast by the electors registered under the Parliamentary Elections Act (Cap. 218).

30 (2) Despite a refusal by the President to concur with the introduction of the Bill, the Bill can still be introduced in Parliament if the Council of Presidential Advisers had recommended to the President that he should concur with the introduction of the Bill.

(3) Before the Government submits a Bill to a national referendum under clause (1)(b), the Government must, if the

President's concurrence for the introduction of the Bill was sought but refused, cause to be published in the *Gazette* both the President's grounds as certified under Article 37IE(2)(a) and the recommendation of the Council of Presidential Advisers in relation to the introduction of the Bill. 5

(4) Before a Bill is introduced under clause (2), the Government must —

(a) cause the President's grounds, as certified under Article 37IE(2)(a), to be published in the *Gazette*; and

(b) send the recommendation of the Council of Presidential Advisers in relation to the introduction of the Bill to the Speaker, who must present the recommendation to Parliament. 10

(5) After a Bill is introduced under clause (1)(a) or (b) or (2), it can only be passed by Parliament if it is supported on Second and Third Readings by the votes of not less than two-thirds of the total number of Members of Parliament (excluding nominated Members). 15

(6) Subject to clause (5), if a Bill is introduced under clause (1)(b), the Bill can be amended during its passage through Parliament if the Speaker is of the opinion that the amendment is of a minor or purely drafting character or that the amendment does not affect the substance of the Bill that was supported at the national referendum. 20

(7) If a Bill seeking to amend clause (9) or any of the provisions mentioned in that clause is not introduced pursuant to clause (1)(a) or (b) or (2), it can only be passed by Parliament if it is supported on Second and Third Readings by the votes of not less than three-quarters of the total number of Members of Parliament (excluding nominated Members). 25 30

(8) Before a Bill is introduced under clause (7), the Government must, if the President's concurrence for the introduction of the Bill was sought but refused —

(a) cause the President's grounds, as certified under Article 37IE(2)(a), to be published in the *Gazette*; and 35

(b) send the recommendation of the Council of Presidential Advisers in relation to the introduction of the Bill to the Speaker, who must present the recommendation to Parliament.

5 (9) The provisions mentioned by clause (1) are —

(a) clause (3) of Article 17 and the provisions mentioned in that clause; and

(b) Articles 22F, 22H, 22J, 22M and 93A.

10 **Additional procedure for amendments that circumvent or curtail certain discretionary powers of President**

15 **5C.**—(1) In addition to Article 5(2), the President may, acting in his discretion, withhold his assent to any Bill seeking to amend this Constitution (other than a Bill to which Article 5A or 5B applies), if the Bill or any provision of the Bill provides, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred on the President by any provision mentioned in Article 5B(9).

20 (2) The President may, on the advice of the Cabinet, refer to a tribunal pursuant to Article 100 (with any necessary modifications) the question whether a Bill seeking to amend this Constitution is one to which clause (1) applies, and such a reference may be made whether or not the President has purported to withhold his assent under clause (1).

25 (3) If a Bill is referred under clause (2), the following provisions apply:

30 (a) if the tribunal is of the opinion that clause (1) does not apply to the Bill, the President is deemed to have assented to the Bill on the day the tribunal pronounces its opinion in open court (even if the President had earlier purported to withhold his assent under clause (1));

(b) if the tribunal is of the opinion that clause (1) applies to the Bill and the President had not earlier signified

his decision on the Bill, the President may, acting in his discretion, withhold his assent to the Bill.

(4) If the President withholds his assent to a Bill under clause (1) or (3)(b), the President is still deemed to have assented to the Bill —

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(a) where the Council of Presidential Advisers has recommended that the President should withhold his assent to the Bill —

(i) if the Government submits the Bill to a national referendum at which it is supported by more than half of the total number of votes cast by the electors registered under the Parliamentary Elections Act (Cap. 218); or

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(ii) if Parliament affirms the Bill by a resolution passed by not less than three-quarters of the total number of Members of Parliament (excluding nominated Members); or

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(b) where the Council of Presidential Advisers has recommended that the President should assent to the Bill, if Parliament affirms the Bill by a resolution passed by not less than two-thirds of the total number of Members of Parliament (excluding nominated Members).

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(5) Before the Government submits a Bill to a national referendum under clause (4)(a)(i), the Government must cause to be published in the *Gazette* both the President's grounds as certified under Article 37IE(2)(a) and the recommendation of the Council of Presidential Advisers in relation to the Bill.

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(6) Before a resolution to affirm a Bill under clause (4)(a)(ii) or (b) can be moved, the Government must —

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(a) cause the President's grounds, as certified under Article 37IE(2)(a), to be published in the *Gazette*; and

(b) send the recommendation of the Council of Presidential Advisers in relation to the Bill to the

Speaker, who must present the recommendation to Parliament.

(7) For the purposes of clause (4), the President is deemed to have assented to the Bill —

(a) on the date on which the result of the national referendum is published in the *Gazette*; or

(b) on the date on which Parliament affirms the Bill,

as the case may be, even if a reference under clause (2) has not been made or is pending the tribunal’s opinion.”.

#### Amendment of Article 17

4. Article 17 of the Constitution is amended —

(a) by deleting the words “and shall exercise and perform such powers and functions as are conferred on the President by this Constitution and any other written law” in clause (1); and

(b) by deleting clauses (2) and (3) and substituting the following clauses:

“(2) In addition to being the Head of State, it is also the function of the President to safeguard the reserves of Singapore and the integrity of the Public Services of Singapore, and the President is to perform this function according to the provisions of this Constitution mentioned in clause (3).

(3) The provisions mentioned by clause (2) are the provisions in Articles 22, 22A, 22B, 22C, 22D, 22E, 37B, 37C and 154A and Part XI that authorise the President to act in his discretion.

(4) The President may exercise such other powers and perform such other functions as are conferred on the President by this Constitution and any other written law.”.



## **New Article 17A**

5. The Constitution is amended by inserting, immediately after Article 17, the following Article:

### **“Election of President**

**17A.—**(1) The President is to be elected by the citizens of Singapore in accordance with any law made by the Legislature. 5

(2) Any poll for the election of President must be held as follows:

(a) in the case where the office of President becomes vacant prior to the expiration of the term of office of the incumbent and a writ for the election has not been issued before such vacation of office or, if so issued, has already been countermanded — within 6 months after the date the office of President becomes vacant; or 10  
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(b) in any other case — not more than 3 months before the date of expiration of the term of office of the incumbent.”.

## **Repeal and re-enactment of Article 18**

6. Article 18 of the Constitution is repealed and the following Article substituted therefor: 20

### **“Presidential Elections Committee**

**18.—**(1) The Presidential Elections Committee (called in this Article the Committee) is established and is to perform the functions relating to elections to the office of President conferred on it by this Constitution or any written law relating to such elections. 25

(2) The Committee consists of —

(a) the Chairman of the Public Service Commission, who is the Chairman of the Committee; 30

- (b) the Chairman of the Accounting and Corporate Regulatory Authority established by the Accounting and Corporate Regulatory Authority Act (Cap. 2A);
- 5 (c) a member of the Presidential Council for Minority Rights, appointed by the Chairman of that Council;
- (d) a member or former member of the Council of Presidential Advisers (but not the sitting Chairman of that Council or a former member who vacated his seat under Article 37F(2)(a) or (c)), appointed by the Chairman of that Council;
- 10 (e) a person who is qualified to be or has been a Judge of the Supreme Court, appointed by the Chief Justice; and
- (f) a person, who in the opinion of the Prime Minister has expertise and experience acquired in the private sector that is relevant to the functions of the Committee, appointed by the Prime Minister.

15 (3) A person appointed as a member under clause (2)(c), (d), (e) or (f) holds office for a term of 6 years and may be re-appointed.

20 (4) The office of a member appointed under clause (2)(c), (d), (e) or (f) falls vacant —

- (a) if the member dies;
- 25 (b) if the member resigns from office in writing addressed to the Chairman of the Committee;
- (c) subject to clause (6), if the member's appointment is revoked by the authority who appointed the member;
- (d) for a member appointed under clause (2)(c), if the member ceases to be a member of the Presidential Council for Minority Rights; or
- 30 (e) for a member who is a member of the Council of Presidential Advisers appointed under clause (2)(d), if the member is subsequently appointed as the Chairman of the Council of Presidential Advisers or

vacates his seat on that Council under Article 37F(2)(a) or (c).

(5) If the office of a member appointed under clause (2)(c), (d), (e) or (f) falls vacant, a new member must be appointed as soon as practicable in accordance with the provisions of this Article under which the vacating member was appointed. 5

(6) A member's appointment cannot be revoked under clause (4)(c) from the time a writ is issued for an election to the office of President until the time a person is declared to be elected to the office of President. 10

(7) If any member of the Committee is absent from Singapore or for any other reason unable to discharge his functions, the following provisions apply:

(a) if the member is the Chairman of the Committee, the Chairman must appoint a Deputy Chairman of the Public Service Commission to act on the Chairman's behalf; 15

(b) if the member is the Chairman of the Accounting and Corporate Regulatory Authority, the member must appoint another member of that Authority to act on the member's behalf; 20

(c) if the member is appointed under clause (2)(c), (d), (e) or (f), another person must be appointed, in accordance with the provisions of this Article under which the member was appointed, to act on the member's behalf. 25

(8) A decision of the Committee must be made by a majority of its members present and voting and, if on any question before the Committee its members are equally divided, the Chairman of the Committee has a casting vote in addition to his original vote. 30

(9) The Committee may act despite any vacancy in its membership.

(10) Subject to this Constitution, the Committee may regulate its procedure and fix the quorum for its meetings.

(11) Parliament may by law provide for the remuneration of members of the Committee and the remuneration so provided is charged on the Consolidated Fund.

(12) A decision of the Committee as to whether a candidate for election to the office of President has fulfilled the requirements of Article 19(2)(e) or (g) is final and is not subject to appeal or review in any court.”.

### **Amendment of Article 19**

7. Article 19 of the Constitution is amended —

(a) by deleting paragraph (g) of clause (2) and substituting the following paragraph:

“(g) satisfies the Presidential Elections Committee that —

(i) he has, at the date of the writ of election, met either the public sector service requirement in clause (3) or the private sector service requirement in clause (4); and

(ii) the period of service counted for the purposes of clause (3)(a), (b) or (c)(i) or (4)(a)(i) or (b)(i) or each of the 2 periods of service counted for the purposes of clause (3)(d) or (4)(c), as the case may be, falls partly or wholly within the 20 years immediately before the date of the writ of election.”;

(b) by deleting clauses (3) and (4) and substituting the following clauses:

“(3) The public sector service requirement is that the person has —

(a) held office for a period of 3 or more years as Minister, Chief Justice, Speaker, Attorney-General, Chairman of the Public

Service Commission, Auditor-General, Accountant-General or Permanent Secretary;

- (b) served for a period of 3 or more years as the chief executive of an entity specified in the Fifth Schedule; 5
- (c) satisfied the following criteria:
- (i) the person has served for a period of 3 or more years in an office in the public sector; 10
  - (ii) the Presidential Elections Committee is satisfied, having regard to the nature of the office and the person's performance in the office, that the person has experience and ability that is comparable to the experience and ability of a person who satisfies paragraph (a) or (b); and 15
  - (iii) the Presidential Elections Committee is satisfied, having regard to any other factors it sees fit to consider, that the person has the experience and ability to effectively carry out the functions and duties of the office of President; 20  
or 25
- (d) held office or served, as the case may be, for a first period of one or more years in an office mentioned in paragraph (a), (b) or (c) and a second period of one or more years in an office mentioned in paragraph (a), (b) or (c), and the 2 periods add up to 3 or more years. 30

(4) The private sector service requirement is that the person has —

(a) served as the chief executive of a company and —

5 (i) the person's most recent period of service as chief executive (ignoring any period of service shorter than a year) is 3 or more years in length;

10 (ii) the company, on average, has at least the minimum amount in shareholders' equity for the person's most recent 3-year period of service as chief executive;

15 (iii) the company, on average, makes profit after tax for the entire time (continuous or otherwise) that the person served as the chief executive of the company; and

20 (iv) if the person has ceased to be the chief executive of the company before the date of the writ of election, the company has not been subject to any insolvency event from the last day of his service as chief executive of the company until —

25 (A) the date falling 3 years after that day; or

(B) the date of the writ of election, whichever is earlier, as assessed solely on the basis of events occurring on or before the date of the writ of election;

30 (b) satisfied the following criteria:

(i) the person has served for a period of 3 or more years in an office in a private sector organisation;

- (ii) the Presidential Elections Committee is satisfied, having regard to the nature of the office, the size and complexity of the private sector organisation and the person's performance in the office, that the person has experience and ability that is comparable to the experience and ability of a person who has served as the chief executive of a typical company with at least the minimum amount of shareholders' equity and who satisfies paragraph (a) in relation to such service; and 5 10
- (iii) the Presidential Elections Committee is satisfied, having regard to any other factors it sees fit to consider, that the person has the experience and ability to effectively carry out the functions and duties of the office of President; or 15 20
- (c) subject to clause (5), served for a first period of one or more years in an office mentioned in paragraph (a) or (b) and a second period of one or more years in an office mentioned in paragraph (a) or (b), and the 2 periods add up to 3 or more years. 25
- (5) If a person proposes to rely on clause (4)(a) for one or both periods of service under clause (4)(c), the following provisions apply: 30
- (a) if the person proposes to rely on one period of service as the chief executive of a company —
- (i) instead of clause (4)(a)(i), the period of service relied on must be the most recent period that the person served 35

as the chief executive of the company (ignoring any period of service less than a year);

5 (ii) instead of clause (4)(a)(ii), the company must, on average, have at least the minimum amount in shareholders' equity for that period of service; and

10 (iii) clause (4)(a)(iii) and (iv) applies without modification in relation to the company;

15 (b) if the person proposes to rely on one period of service as the chief executive of one company and one period of service as the chief executive of another company —

20 (i) instead of clause (4)(a)(i), the period of service relied on for each company must be the most recent period that the person served as the chief executive of that company (ignoring any period of service less than a year);

25 (ii) instead of clause (4)(a)(ii), each company must, on average, have at least the minimum amount in shareholders' equity for the period of service relied on; and

30 (iii) clause (4)(a)(iii) and (iv) applies without modification in relation to each company;

(c) if the person proposes to rely on 2 periods of service as the chief executive of one company —

35 (i) instead of clause (4)(a)(i), the 2 periods of service must be the



2 most recent periods of service that the person served as the chief executive of the company (ignoring any period of service less than a year);

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(ii) instead of clause (4)(a)(ii), the company must, on average, have at least the minimum amount in shareholders' equity for each period of service; and

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(iii) clause (4)(a)(iii) and (iv) applies without modification in relation to the company.

(6) The Legislature may, by law —

(a) specify how the Presidential Elections Committee is to calculate and determine shareholders' equity for the purposes of clauses (4)(a)(ii) and (b)(ii) and (5)(a)(ii), (b)(ii) and (c)(ii);

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(b) specify how the Presidential Elections Committee is to calculate and determine profit after tax for the purposes of clause (4)(a)(iii); and

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(c) prescribe what constitutes an insolvency event for the purposes of clause (4)(a)(iv).

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(7) The minimum amount mentioned in clauses (4)(a)(ii) and (b)(ii) and (5)(a)(ii), (b)(ii) and (c)(ii) is \$500 million and this amount can be increased if —

(a) a committee consisting of all the members of the Presidential Elections Committee presents to Parliament a recommendation that the amount be increased; and

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(b) Parliament, by resolution, decides to increase the amount by the extent recommended by the committee or by any lesser extent.

5 (8) A resolution under clause (7)(b) cannot be passed —

(a) when the office of President is vacant; or

(b) during the 6 months before the date on which the term of office of an incumbent President expires.

10 (9) The committee mentioned in clause (7)(a) —

(a) may regulate its own procedure and make rules for that purpose;

(b) may from time to time, and must at least once every 12 years (starting from the date of commencement of section 7(b) of the Constitution of the Republic of Singapore (Amendment) Act 2016), review the minimum amount of shareholders' equity required under clauses (4)(a)(ii) and (b)(ii) and (5)(a)(ii), (b)(ii) and (c)(ii); and

(c) must present a report of its conclusions to Parliament (even if it does not recommend an increase).

25 (10) In clauses (3), (4) and (5), unless the context otherwise requires —

30 “chief executive”, in relation to an entity or organisation, means the most senior executive (however named) in that entity or organisation, who is principally responsible for the management and conduct of the entity's or organisation's business and operations;

“company” means a company limited by shares and incorporated or registered in Singapore under the general law relating to companies;

“period” means continuous period.”; and

- (c) by deleting the words “and disabilities” in the Article heading. 5

### **New Article 19A**

8. The Constitution is amended by inserting, immediately after Article 19, the following Article:

#### **“Disabilities of President” 10**

**19A.**—(1) The President must —

- (a) not hold any other office created or recognised by this Constitution;
- (b) not actively engage in any commercial enterprise;
- (c) not be a member of any political party; and 15
- (d) if he is a Member of Parliament, vacate his seat in Parliament.

(2) Nothing in clause (1) is to be construed as requiring any person exercising the functions of the office of President under Article 22N or 22O to — 20

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

### **New Article 19B** 25

9. The Constitution is amended by inserting, immediately before Article 20, the following Article:

**“Reserved election for community that has not held office of President for 5 or more consecutive terms**

5 **19B.—**(1) An election for the office of President is reserved for a community if no person belonging to that community has held the office of President for any of the 5 most recent terms of office of the President.

(2) A person is qualified to be elected as President —

10 (a) in an election reserved for one community under clause (1), only if the person belongs to the community for which the election is reserved and satisfies the requirements in Article 19;

(b) in an election reserved for 2 communities under clause (1) —

15 (i) only if the person satisfies the requirements in Article 19 and belongs to the community from which a person has not held the office of President for the greater number of consecutive terms of office immediately before the election; or

20 (ii) if no person qualifies under sub-paragraph (i), only if the person satisfies the requirements in Article 19 and belongs to the other community for which the election is reserved; and

25 (c) in an election reserved for all 3 communities under clause (1) —

30 (i) only if the person satisfies the requirements in Article 19 and belongs to the community from which a person has not held the office of President for the greatest number of consecutive terms of office immediately before the election;

(ii) if no person qualifies under sub-paragraph (i), only if the person satisfies the requirements in Article 19 and belongs to the community from

which a person has not held the office of President for the next greatest number of consecutive terms of office immediately before the election; or

- (iii) if no person qualifies under sub-paragraph (i) or (ii), only if the person satisfies the requirements in Article 19 and belongs to the remaining community. 5

(3) For the purposes of this Article, a person who exercises the functions of the President under Article 22N or 22O is not considered to have held the office of President. 10

(4) The Legislature may, by law —

(a) provide for the establishment of one or more committees to decide, for the purposes of this Article, whether a person belongs to the Chinese community, the Malay community or the Indian or other minority communities; 15

(b) prescribe the procedure by which a committee under paragraph (a) decides whether a person belongs to a community; 20

(c) provide for the dispensation of the requirement that a person must belong to a community in order to qualify to be elected as President if, in a reserved election, no person who qualifies to be elected as President under clause (2)(a), (b) or (c) (as the case may be) is nominated as a candidate for election as President; and 25

(d) make such provisions the Legislature considers necessary or expedient to give effect to this Article.

(5) No provision of any law made pursuant to this Article is invalid on the ground of inconsistency with Article 12 or is considered to be a differentiating measure under Article 78. 30

(6) In this Article —

“community” means —

(a) the Chinese community;

(b) the Malay community; or

(c) the Indian or other minority communities;

“person belonging to the Chinese community” means any person who considers himself to be a member of the Chinese community and who is generally accepted as a member of the Chinese community by that community;

“person belonging to the Malay community” means any person, whether of the Malay race or otherwise, who considers himself to be a member of the Malay community and who is generally accepted as a member of the Malay community by that community;

“person belonging to the Indian or other minority communities” means any person of Indian origin who considers himself to be a member of the Indian community and who is generally accepted as a member of the Indian community by that community, or any person who belongs to any minority community other than the Malay or Indian community;

“term of office” includes an uncompleted term of office.”.

### **Amendment of Article 21**

**10.** Article 21 of the Constitution is amended by deleting clauses (2), (3) and (4) and substituting the following clause:

“(2) The President may act in his discretion in the performance of the following functions (in addition to those in the performance of which he may act in his discretion under the other provisions of this Constitution):

(a) the appointment of the Prime Minister in accordance with Article 25;

(b) the withholding of consent to a request for a dissolution of Parliament.”.

## New Article 21A

11. The Constitution is amended by inserting, immediately after Article 21, the following Article:

**“General time limit for President to exercise discretionary powers**

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**21A.—**(1) In any particular case where this Constitution authorises the President to act in his discretion in assenting to, concurring with, approving, disapproving or confirming any matter, the President must signify his decision within the specified period —

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- (a) after his assent, concurrence, approval or confirmation is sought; or
- (b) after he is informed of a proposed transaction under Article 22B(6), 22D(5) or 148G(1),

as the case may be.

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(2) Subject to any reduction or extension under clause (3), the specified period for the purposes of clause (1) is —

- (a) 30 days for the following matters:
  - (i) whether to concur with the introduction of a Bill to which Article 5A or 5B applies;
  - (ii) whether to assent to a Supply Bill, Supplementary Supply Bill, Final Supply Bill or a Bill to which Article 5C or 22H applies;
  - (iii) whether to concur under Article 22G with the making of an inquiry or the carrying out of an investigation by the Director of the Corrupt Practices Investigation Bureau;
  - (iv) whether to confirm under Article 22I a restraining order made under the Maintenance of Religious Harmony Act (Cap. 167A);
  - (v) whether to concur under Article 151(4) with the detention or further detention of a person; and

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(b) 6 weeks in all other cases.

(3) In any particular case, the specified period in clause (2) may —

5 (a) if the Prime Minister certifies to the President at the time the President's decision is sought or at any time thereafter that the case is so urgent that it is not in the public interest to delay a decision, be reduced to the period certified by the Prime Minister (which must not end less than 15 days after the date of the certificate);  
10 or

(b) be extended according to any agreement between the President, acting in his discretion, and the Cabinet.

15 (4) For the purposes of Articles 5C(1) and 22H(1), if a reference is made under Article 5C(2) or 22H(2), respectively, the time from the making of the reference to the tribunal's pronouncement of its opinion is not counted towards the specified period.

20 (5) If in any particular case the President fails to signify his decision within the specified period, the President is deemed to have, at the end of that period —

(a) subject to paragraph (c), given the assent, concurrence, approval or confirmation sought in that case;

25 (b) in a case under Article 22B(7), 22D(6) or 148G(2), declined to disapprove the proposed transaction that the President was informed of; or

30 (c) in a case under Article 22G, refused to concur with the making of an inquiry or the carrying out of an investigation by the Director of the Corrupt Practices Investigation Bureau,

as the case may be.

(6) This Article does not apply to the President's discretion under this Constitution to withhold consent to a request for a dissolution of Parliament.”



**Amendment of Article 22**

**12.** Article 22 of the Constitution is amended —

- (a) by inserting, immediately after the words “Public Service Commission” in clause (1)(f), the words “, and the members of a personnel board established under Article 110D to exercise any power over Division I officers”; 5
- (b) by inserting, immediately after the words “or (c)” in clause (1)(fa), the words “, and the members of a personnel board established under Article 111AA”; and 10
- (c) by deleting clauses (2) and (3).

**Amendment of Article 22A**

**13.** Article 22A of the Constitution is amended —

- (a) by deleting clauses (1A) and (1B); and
- (b) by deleting the words “\$100 million” in clause (5) and substituting the words “\$500 million”. 15

**Amendment of Article 22C**

**14.** Article 22C of the Constitution is amended —

- (a) by deleting clauses (1A) and (1B); and
- (b) by deleting the words “\$100 million” in clause (5)(a) and substituting the words “\$500 million”. 20

**Amendment of Article 22H**

**15.** Article 22H of the Constitution is amended by deleting clause (4).

**Amendment of Article 22L**

**16.** Article 22L of the Constitution is amended —

- (a) by inserting, immediately after paragraph (a) of clause (1), the following paragraph: 25

“(aa) if the President ceases to be a citizen of Singapore;”;

(b) by deleting the words “the elected Members of Parliament referred to in Article 39(1)(a)” in clauses (3), (4) and (7) and substituting in each case the words “Members of Parliament (excluding nominated Members)”;

(c) by deleting the word “or” at the end of clause (3)(c); and

(d) by deleting the comma at the end of paragraph (d) of clause (3) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(e) intentionally or knowingly making a materially false or misleading statement of fact, or intentionally or knowingly failing to state a material fact, to the Presidential Elections Committee for the purpose of demonstrating his eligibility to be elected as President,”.

### **Amendment of Article 37B**

17. Article 37B of the Constitution is amended by deleting clauses (1), (2) and (3) and substituting the following clauses:

“(1) The Council of Presidential Advisers is established and consists of 8 members.

(2) In order to ensure that appointments to the Council are made at regular 2-year intervals, the members of the Council are divided into the following divisions:

(a) the first division, consisting of the following members whose appointments expire on 1 June 2020 and every sixth year after that:

(i) a member appointed by the President acting in his discretion;

(ii) a member appointed by the President on the advice of the Prime Minister;

- (iii) a member appointed by the President on the advice of the Chief Justice;
- (b) the second division, consisting of the following members whose appointments expire on 1 June 2022 and every sixth year after that: 5
  - (i) a member appointed by the President acting in his discretion;
  - (ii) a member appointed by the President on the advice of the Prime Minister;
  - (iii) a member appointed by the President on the advice of the Chairman of the Public Service Commission; 10
- (c) the third division, consisting of the following members whose appointments expire on 1 June 2024 and every sixth year after that: 15
  - (i) a member appointed by the President acting in his discretion;
  - (ii) a member appointed by the President on the advice of the Prime Minister.
- (3) If the seat of a member falls vacant before the member's appointment expires under clause (2) — 20
  - (a) the President may make another appointment to that seat in accordance with the provision of clause (2) under which the vacating member was appointed; and
  - (b) to avoid doubt, an appointment under paragraph (a) expires in accordance with the provision of clause (2) under which the vacating member was appointed. 25
- (3A) The President, acting in his discretion, is to appoint a member of the Council to be the Chairman of the Council.”.

### **Amendment of Article 37C**

**18.** Article 37C of the Constitution is amended —

(a) by deleting the words “Article 37B(1)” in clause (1) and substituting the words “Article 37B(2)”;

5 (b) by deleting the words “Article 37B(1)” in clause (3) and substituting the words “Article 37B(2)”;

(c) by deleting the words “any of the 2 members appointed under Article 37B(1)(a)” in clause (3)(i) and substituting the words “appointed under Article 37B(2)(a)(i), (b)(i) or (c)(i)”;

10

(d) by deleting the words “any of the 2 members appointed under Article 37B(1)(b)” in clause (3)(ii) and substituting the words “appointed under Article 37B(2)(a)(ii), (b)(ii) or (c)(ii)”;

15 (e) by deleting the words “a member appointed under Article 37B(1)(c) or (d)” in clause (3)(iii) and substituting the words “appointed under Article 37B(2)(a)(iii) or (b)(iii)”.

### **Amendment of Article 37D**

20 **19.** Article 37D of the Constitution is amended —

(a) by renumbering the Article as clause (1) of that Article, and by inserting immediately thereafter the following clause:

25 “(2) The following matters are to be considered by the President before he acts in his discretion to appoint a person as a member, and also by the Prime Minister, Chief Justice and the Chairman of the Public Service Commission before advising the President to appoint a person as a member:

30 (a) whether the person is a person of integrity, good character and reputation;

(b) whether the person has expertise and experience relevant to the matters on which the Council is required, or may be

asked, to advise and make recommendations to the President.”; and

- (b) by inserting, immediately after the word “members” in the Article heading, the words “and considerations in appointing members”.

5

### **Amendment of Article 37H**

**20.** Article 37H(2) of the Constitution is amended by deleting the words “Article 37B(1)” and substituting the words “Article 37B(2)”.

### **Amendment of Article 37I**

**21.** Article 37I of the Constitution is amended by deleting the words “Article 21(3) or (4)” and substituting the words “this Constitution”.

10

### **New Articles 37IA to 37IG**

**22.** The Constitution is amended by inserting, immediately after Article 37I, the following Articles:

#### **“President’s general duty to consult Council**

15

**37IA.—**(1) The President must consult the Council before exercising any discretionary power conferred on him by this Constitution, except the discretionary powers mentioned in clause (2).

(2) The President may (but need not) consult the Council before exercising —

20

(a) the President’s discretionary powers under Articles 22G, 22I and 151(4);

(b) the President’s discretionary powers under this Part; or

(c) the following discretionary powers:

25

(i) the President’s discretion under Article 22J in relation to his personal staff and the use of the Civil List;

(ii) appointing the Prime Minister in accordance with Article 25(1);

30

- (iii) declaring under Article 26(1)(b) that the office of Prime Minister is vacant;
- (iv) authorising a Minister to exercise the Prime Minister's functions under Article 26(4)(c);
- 5 (v) dissolving Parliament under Article 26(1)(b) or 65(2) or (3);
- (vi) granting leave of absence to the Chief Justice under Article 98(10).

**President to immediately refer to Council certain cases concerning veto powers**

**37IB.** Without limiting Article 37IA, the President must immediately refer to the Council for its recommendation —

- (a) any case where the President's assent, concurrence or approval is sought and which the President is required to consult the Council under Article 37IA(1); and
- 15 (b) any proposed transaction that the President is informed of under Article 22B(6), 22D(5) or 148G(1).

**Referred cases — time limit for Council to make recommendation**

**37IC.**—(1) Subject to clauses (2) and (3), the Council must give its recommendation in a case referred to it under Article 37IB —

- (a) if the President is required by Article 21A(2)(a) to signify his decision in the case within 30 days, within 15 days after the case is referred to the Council; and
- 25 (b) if the President is required by Article 21A(2)(b) to signify his decision in the case within 6 weeks, within 3 weeks after the case is referred to the Council.

(2) If the Prime Minister issues a certificate of urgency to the President under Article 21A(3)(a) for any case referred to the Council under Article 37IB —

(a) the President must immediately inform the Council of the certificate; and

(b) the Council must give its recommendation to the President by whichever of the following time limits ends earlier: 5

(i) the time limit in clause (1), including any extension under clause (3);

(ii) at least 5 days before the date on which the President is required by the certificate to signify his decision. 10

(3) The President may, acting in his discretion, extend the time limit in clause (1) for any case referred to the Council under Article 37IB, but any extension does not have effect, or if granted ceases to have effect, to the extent that it allows the Council to give its recommendation less than 5 days before the date on which the President is required to signify his decision under Article 21A. 15

(4) If in any case the Council fails to give its recommendation within the time limit in this Article, the Council is deemed to have recommended that the President — 20

(a) give the assent, concurrence or approval that was sought; or

(b) not disapprove the proposed transaction under Article 22B(7), 22D(6) or 148G(2),

as the case may be. 25

**Referred cases — matters to be stated in Council’s recommendation, etc.**

**37ID.** In a case referred to the Council under Article 37IB, the Council’s recommendation to the President must state —

(a) whether the Council’s recommendation is unanimous and if not, the number of votes for and against the recommendation; and 30

(b) the grounds for the Council’s recommendation.

**Referred cases — Prime Minister to receive President’s grounds and Council’s recommendation if President exercises veto, etc.**

5       **37IE.**—(1) This Article applies if, in a case referred to the Council under Article 37IB, the President acts in his discretion to —

          (a) refuse to give the assent, concurrence or approval that was sought; or

10       (b) disapprove a proposed transaction under Article 22B(7), 22D(6) or 148G(2).

(2) If this Article applies —

          (a) the President must certify the grounds for his decision to the Prime Minister and send the Council’s recommendation to the Prime Minister;

15       (b) in a case where the President withholds his assent to a Supply Bill, Supplementary Supply Bill or Final Supply Bill —

          (i) the President must publish in the *Gazette* the grounds certified under paragraph (a); and

20       (ii) the President must send the recommendation of the Council in relation to the Bill to the Speaker, who must present the recommendation to Parliament; and

25       (c) in a case where the President disapproves the budget, supplementary budget or revised budget of, or a proposed transaction by, an entity specified in the Fifth Schedule, the President must send the grounds certified under paragraph (a) and the recommendation of the Council to —

30       (i) in the case of a statutory board, the chairman of the statutory board; and

          (ii) in the case of a Government company, the chairman of the board of directors of the company.



**Referred cases — Parliament may overrule Presidential veto exercised contrary to Council’s recommendation**

**37IF.**—(1) Parliament may, by resolution, overrule the President, if —

- (a) in a case referred to the Council under Article 37IB, 5  
the President acts in his discretion to —
  - (i) refuse to give the assent, concurrence or approval that was sought; or
  - (ii) disapprove a proposed transaction under Article 22B(7), 22D(6) or 148G(2); and 10
- (b) the President’s decision was made contrary to the Council’s recommendation.

(2) A resolution under clause (1) —

- (a) may only be passed on a motion for which notice has been given by a Minister; 15
- (b) except where the resolution seeks to overrule the President’s withholding of assent to a Supply Bill, Supplementary Supply Bill or Final Supply Bill, may only be moved after the Government —
  - (i) causes the President’s grounds for the decision sought to be overruled, as certified under Article 37IE(2)(a), to be published in the *Gazette*; and 20
  - (ii) sends the recommendation of the Council in relation to that decision to the Speaker, who must present the recommendation to Parliament; and 25
- (c) must be passed by no less than two-thirds of the total number of Members of Parliament (excluding nominated Members). 30

(3) If Parliament overrules the President under clause (1), the President is deemed —

(a) to have, on the date the overruling resolution was passed, given the assent, concurrence or approval that was sought; or

(b) never to have disapproved of the proposed transaction under Article 22B(7), 22D(6) or 148G(2),

as the case may be.

(4) This Article does not apply to the President’s discretionary powers under Articles 5A, 5B, 5C and 22H.

### **Quorum and voting**

**37IG.**—(1) The Council must not transact any business unless a quorum of 5 members, including the Chairman or the member appointed under Article 37B(5)(a) to act as the Chairman, is present.

(2) Any recommendation or decision of the Council must be made by a majority of members present and voting.

(3) If on any question before the Council the members are equally divided, the Chairman has a casting vote in addition to his original vote.”.

### **Amendment of Article 37J**

**23.** Article 37J of the Constitution is amended —

(a) by deleting the words “under Article 21(3) or (4)” in clause (1);

(b) by deleting clauses (2), (2A) and (2B); and

(c) by deleting the words “(including any quorum) but no such rules shall have effect until they have been approved by the President” in clause (3).

### **Repeal of Article 37K**

**24.** Article 37K of the Constitution is repealed.

### **Amendment of Article 39**

**25.** Article 39 of the Constitution is amended —

- (a) by deleting “9” in clause (1)(b) and substituting “12”;
- (b) by deleting the words “non-constituency Member or a” in clause (2);
- (c) by deleting the word “and” at the end of clause (2)(d); and
- (d) by deleting the full-stop at the end of paragraph (e) of clause (2) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(f) any question on which nominated Members are excluded by this Constitution from the number of Members required for an affirmative decision.”.

### **Amendment of Article 78**

**26.** Article 78(6) of the Constitution is amended by deleting the words “the affirmative vote of not less than two-thirds of the total membership of Parliament” in paragraph (c) and substituting the words “not less than two-thirds of the total number of Members of Parliament (excluding nominated Members)”.

### **Amendment of Article 144**

**27.** Article 144(1) of the Constitution is amended by inserting, immediately after the word “President” in paragraphs (a) and (b), the words “, acting in his discretion,”.

### **Amendment of Article 148A**

**28.** Article 148A of the Constitution is amended —

- (a) by deleting the words “Article 148D” in clause (2) and substituting the words “Article 37IF”; and
- (b) by deleting clause (5).

### **Repeal of Article 148D**

**29.** Article 148D of the Constitution is repealed.

### **Amendment of Article 150**

**30.** Article 150(5) of the Constitution is amended —

(a) by deleting sub-paragraphs (i) and (ii) of paragraph (b); and

(b) by inserting, immediately before sub-paragraph (iii) of paragraph (b), the following sub-paragraphs:

“(i) Articles 5A, 5B and 5C;

(ii) any provision mentioned in Article 5B(9) which authorises the President to act in his discretion; and”.

### **Amendment of Article 151**

**31.** Article 151(4) of the Constitution is amended by inserting, immediately after the word “President”, the words “, acting in his discretion,”.

### **New Article 164**

**32.** The Constitution is amended by inserting, immediately after Article 163, the following Article:

#### **“Transitional provisions for Article 19B**

**164.—**(1) The Legislature must, by law —

(a) specify the first term of office of the President to be counted for the purposes of deciding whether an election is reserved under Article 19B; and

(b) if any of the terms of office that are counted for the purposes of deciding whether an election is reserved under Article 19B commenced before the appointed date, further specify the communities to which the persons who held those terms of office are considered to belong.

(2) In this Article, “appointed date” means the date of commencement of section 9 of the Constitution of the Republic of Singapore (Amendment) Act 2016.”.

## New Article 165

33. The Constitution is amended by inserting, immediately before the First Schedule, the following Article:

### “**Transitional provisions for Council of Presidential Advisers**

5

**165.**—(1) An existing member continues to be a member for the remaining duration of the existing member’s last appointment.

(2) Article 37B(2) applies to the appointment or re-appointment of any person as a member on or after the appointed date.

10

(3) The first 3 appointments made under Article 37B(2) by the President acting in his discretion must be made as follows:

(a) the first appointment must be made under Article 37B(2)(a)(i) as soon as practicable after the appointed date;

15

(b) the second appointment must be made under Article 37B(2)(b)(i) as soon as practicable after any existing member appointed by the President acting in his discretion completes the member’s term or vacates the member’s seat;

20

(c) the third appointment must be made under Article 37B(2)(c)(i) as soon as practicable after the remaining existing member appointed by the President acting in his discretion completes the member’s term or vacates the member’s seat.

25

(4) The first 3 appointments made under Article 37B(2) by the President on the advice of the Prime Minister must be made as follows:

(a) the first appointment must be made under Article 37B(2)(a)(ii) as soon as practicable after the appointed date;

30

(b) the second appointment must be made under Article 37B(2)(b)(ii) as soon as practicable after any

existing member appointed by the President on the Prime Minister's advice completes the member's term or vacates the member's seat;

5 (c) the third appointment must be made under Article 37B(2)(c)(ii) as soon as practicable after the remaining existing member appointed by the President on the Prime Minister's advice completes the member's term or vacates the member's seat.

10 (5) The first appointment made under Article 37B(2)(a)(iii) must be made as soon as practicable after the existing member appointed by the President on the Chief Justice's advice completes the member's term or vacates the member's seat.

15 (6) The first appointment made under Article 37B(2)(b)(iii) must be made as soon as practicable after the existing member appointed by the President on the advice of the Chairman of the Public Service Commission completes the member's term or vacates the member's seat.

(7) In this Article, unless the context otherwise requires —

20 “appointed date” means the date of commencement of section 17 of the Constitution of the Republic of Singapore (Amendment) Act 2016;

“existing member” means a member on the date immediately before the appointed date;

25 “member” means a member of the Council of Presidential Advisers.”.

### **Amendment of Fifth Schedule**

**34.** Part II of the Fifth Schedule to the Constitution is amended by deleting item 2.

## **Related amendments to Constitution of the Republic of Singapore (Amendment) Act 1996**

**35.** The Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996) is amended by repealing sections 2, 3, 4 and 16.

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### EXPLANATORY STATEMENT

This Bill seeks to amend the Constitution of the Republic of Singapore (1999 Reprint) —

- (a) to give effect to the White Paper on the Review of Specific Aspects of the Elected Presidency (Cmd. 7 of 2016), presented to Parliament on 15 September 2016; and
- (b) to make certain amendments relating to non-constituency Members of Parliament.

The Bill also makes related amendments to the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996).

Clause 1 relates to the short title and commencement.

### PART 1

#### ENTRENCHMENT OF PROVISIONS RELATING TO THE PRESIDENT

A revised entrenchment framework is put in place for certain provisions relating to the President. For this purpose the following amendments are made.

Clause 4 amends Article 17 to set out the key functions and certain discretionary powers of the President and their relation to each other. The principal function of the President as the Head of State is stated in Article 17(1). The new Article 17(2) states the President's additional, non-executive function of safeguarding the reserves of Singapore and the integrity of the Public Services of Singapore. The provision is a statement of principle. The scope of the President's powers arising from this function are defined by, and the President is to perform this function in accordance with, the provisions mentioned in the new Article 17(3). (Those provisions, and Article 17(3) itself, can be amended in accordance with the new Article 5B.) The new Article 17(4) provides that the President may exercise such other powers and perform such other functions according to the Constitution and any other written law. Existing clauses (2) and (3) of Article 17 are deleted and re-enacted as the new Article 17A by clause 5.

Clause 3 inserts new Articles 5A, 5B and 5C, which establish a revised entrenchment framework.

The new Article 5A applies to a Bill seeking to make textual amendments to the provisions mentioned in the new Article 5A(7). Those provisions include Article 17(1) and (2) and the key provisions establishing the office of President. They also include the entrenchment framework in the new Articles 5A, 5B and 5C (but not the list of provisions to which the new Article 5B applies, which provisions can be amended in accordance with Article 5B). A Bill seeking to make textual amendments to the provisions to which Article 5A applies can be introduced in Parliament only if: (a) the President concurs with the introduction of the Bill, or the President refuses to so concur but his refusal is contrary to the recommendation of the Council of Presidential Advisers; or (b) the Bill is supported by more than half of the total number of votes cast at a national referendum.

The new Article 5B applies to a Bill (other than a Bill to which Article 5A applies) seeking to make textual amendments to the provisions mentioned in the new Article 5B(9) and to the new Article 5B(9) itself. Those provisions include other provisions relating to the office of President and the provisions mentioned in Article 17(3) that authorise the President to act in his discretion. For the latter set of provisions, Article 5B applies only to textual amendments to the specific discretion-conferring provisions in the Articles mentioned in Article 17(3). Amendments to any other parts of those Articles will not be subject to Article 5B. For instance, Article 5B (read with Article 17(3)) applies to textual amendments to clause (1A)(a) of Article 142 in Part XI, but not to textual amendments to the other provisions in that Article (e.g. clause (1A)(b)). A Bill seeking to make textual amendments to the provisions to which Article 5B applies must satisfy one of the following 3 requirements: (a) the President must concur with the introduction of the Bill or, if the President refuses to so concur, his refusal must be contrary to the recommendation of the Council of Presidential Advisers; (b) before the introduction of the Bill in Parliament, the Bill must be supported by more than half of the total number of votes cast at a national referendum; or (c) the Bill can be introduced in the ordinary way, but must subsequently be supported by the votes of no less than three-quarters of the total number of Members of Parliament (excluding nominated Members) on its Second and Third Readings for it to be passed.

The new Article 5C applies to a Bill (other than a Bill to which Article 5A or 5B applies) seeking to amend the Constitution, if the Bill provides for the circumvention or curtailment of any discretionary power conferred on the President by any provision mentioned in the new Article 5B(9). The President may, acting in his discretion, withhold his assent to such a Bill. If the President's decision to withhold his assent is made contrary to the recommendation of the Council of Presidential Advisers, the President will be deemed to have assented if at least two-thirds of the total number of Members of Parliament (excluding nominated Members) pass a resolution to affirm the Bill. If the President's decision



to withhold his assent is supported by the recommendation of the Council of Presidential Advisers, the President will only be deemed to have assented if the Bill is supported by more than half of the total number of votes cast at a national referendum or if at least three-quarters of the total number of Members of Parliament (excluding nominated Members) pass a resolution to affirm the Bill. Provision is also made for the President to, on the advice of the Cabinet, refer a constitutional amendment Bill to a tribunal to decide whether the Bill is one to which the Article applies.

Clause 30 makes a consequential amendment to Article 150(5)(b).

Clause 35 amends the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996) to remove the entrenchment framework sought to be inserted by sections 2, 3, 4 and 16 of that Act, which sections have not been brought into operation.

## PART 2

### PRESIDENTIAL ELECTIONS COMMITTEE

Clause 6 repeals and re-enacts Article 18 to enhance the composition and other aspects of the Presidential Elections Committee (called in this Part the Committee). The key changes are as follows.

The Committee is enlarged to include 3 more appointed members: (1) a member or former member of the Council of Presidential Advisers (other than the Chairman of the Council or any former member who vacated his seat under Article 37F(2)(a) or (c)) appointed by the Chairman of that Council; (2) a person, who must be qualified to be or have been a Judge of the Supreme Court, appointed by the Chief Justice; and (3) a person, who in the opinion of the Prime Minister has private sector expertise and experience that is relevant to the functions of the Committee, appointed by the Prime Minister.

The Committee will remain a standing institution, with provision for appointed members to hold 6-year terms.

The office of an appointed member falls vacant if the member dies or resigns or if the appointing authority revokes the appointment. An appointment cannot be revoked from the time a writ has been issued for a Presidential election until the time a person is declared to be elected as President.

Provision is made for the Committee to make decisions by a majority of its members present and voting, and for the Chairman of the Committee to have a casting vote if there is a tie.

## PART 3

## ELIGIBILITY CRITERIA FOR PRESIDENTIAL CANDIDATES

Clause 7 deletes clauses (2)(g), (3) and (4) of Article 19 and inserts new clauses (2)(g) and (3) to (10) to update and refine the eligibility criteria for Presidential candidates.

The new clause (2)(g) sets out the broad requirements. A candidate must meet either the public sector service requirement in clause (3) or the private sector service requirement in clause (4). The period or periods of service counted for this purpose must fall partly or wholly within the 20 years immediately before the date of the writ for the election in which the candidate seeks to qualify.

The new clause (3) sets out the public sector service requirement. This requirement can be satisfied in 4 alternative ways.

- (1) The person holds office for a period of 3 or more years in certain key public offices (new clause (3)(a)).
- (2) The person serves for a period of 3 or more years as the chief executive of a Fifth Schedule entity (new clause (3)(b)).
- (3) (a) The person serves for a period of 3 or more years in an office in the public sector; (b) the Presidential Elections Committee is satisfied (having regard to the nature of the office and the person's performance in that office) that the person has experience and ability that is comparable to the experience and ability of a person who satisfies the new clause (3)(a) or (b); and (c) the Presidential Elections Committee is satisfied, in the final analysis, that the person has the experience and ability to effectively carry out the functions and duties of the President (new clause (3)(c)).
- (4) The person serves for 2 periods of at least one year each in any of the abovementioned offices, and the 2 periods add up to 3 or more years in total (new clause (3)(d)).

The new clause (4) sets out the private sector service requirement. This requirement can be satisfied in 3 alternative ways.

- (1) The person serves as the chief executive of a company and 4 substantive criteria are met (new clause (4)(a)). The first criterion relates to the length and currency of service — the person's most recent period of service as the chief executive of that company (ignoring any period of service less than a year) must be 3 or more years in length. The second criterion relates to size — the company must have the minimum amount of shareholders' equity for the person's most recent 3-year period of service as chief executive. The third criterion relates to profitability — the company must, on average, make profit after tax for

the entire time that the person is the chief executive. This includes discontinuous periods of service, and periods of service falling outside the person's most recent 3-year period of service or the 20-year period immediately before the date of the writ of election. The fourth criterion relates to solvency — if the person's last day as chief executive is before the date of the writ of election, the company must not be subject to any insolvency event for 3 years after that day or until the date of the writ of election, whichever period is shorter. Whether the company has been subject to an insolvency event is to be assessed on the basis of events occurring on or before the date of the writ of election. For instance, a winding-up order made after the date of the writ of election is not considered, even if it relates back to circumstances before that date.

- (2) (a) The person serves for a period of 3 or more years in an office in a private sector organisation; (b) the Presidential Elections Committee is satisfied (having regard to the nature of the office, the size and complexity of the private sector organisation and the person's performance in the office) that the person has experience and ability that is comparable to a person who is the chief executive of a typical company which has at least the minimum amount of shareholders' equity and who satisfies the new clause (4)(a) in relation to such service; and (c) the Presidential Elections Committee is satisfied, in the final analysis, that the person has the experience and ability to effectively carry out the functions and duties of the President (new clause (4)(b)).
- (3) The person holds office or serves for 2 periods of at least one year each in any of the abovementioned offices, and the 2 periods add up to 3 or more years in total (new clause (4)(c)).

The new clause (5) sets out certain modifications to the requirements under the new clause (4)(a) when a person intends to rely on the latter provision for one or both periods of service required under the new clause (4)(c). The underlying principle is that the person can only rely on his most recent period or most recent 2 periods of service in a given company, and the size requirement for the company must be met for that period or each of those periods.

The new clause (6) empowers the Legislature to, by law, (a) specify how the Presidential Elections Committee is to calculate and determine shareholders' equity; (b) specify how the Presidential Elections Committee is to calculate and determine profit after tax; and (c) prescribe what constitutes an insolvency event.

The new clause (7) specifies that the minimum amount of shareholders' equity under the new clauses (4)(a)(ii) and (b)(ii) and (5)(a)(ii), (b)(ii) and (c)(ii) is \$500 million, and the new clauses (7), (8) and (9) set out a mechanism for increasing the minimum amount. A committee comprising all of the members of

the Presidential Elections Committee must carry out a review of the amount at least once every 12 years, and may do so more frequently if it so chooses. The amount can be increased if the committee recommends an increase and Parliament resolves to adopt the recommendation in accordance with Article 57(1). Parliament can also choose to raise the minimum amount of shareholders' equity by a smaller amount than that recommended by the committee. The mechanism cannot be used to decrease the minimum amount, which can only be done via a constitutional amendment in accordance with Article 5(2).

The new clause (10) defines certain terms used for the new requirements.

Clause 8 inserts a new Article 19A, which re-enacts the provisions on the disabilities of the President in the existing Article 19(3) and (4).

#### PART 4

##### REPRESENTATION OF MAIN COMMUNITIES IN OFFICE OF PRESIDENT

Clause 9 inserts a new Article 19B to provide for a Presidential election to be reserved for a community if no person belonging to that community has held the office of President for any of the 5 most recent Presidential terms. Reservation can apply to (1) the Chinese community; (2) the Malay community; and (3) the Indian community and other minority communities in Singapore. The definitions of a person belonging to the Malay community and a person belonging to the Indian or other minority communities are identical to the definitions of those terms in Article 39A for the purposes of group representation constituencies. Similar provision is made for persons belonging to the Chinese community. The Legislature is empowered (a) to make laws to establish committees to decide whether a person belongs to a given community; (b) to dispense with the community requirement if there are no qualified candidates; and (c) generally to give effect to Article 19B.

Clause 32 requires the Legislature to make transitional provisions for the purposes of new Article 19B. Transitional provisions will specify the first term of office of the President to be counted for the purposes of deciding whether an election is reserved under Article 19B. If any of the Presidential terms to be counted commences before the date on which Article 19B is brought into force, the transitional provisions will also specify the communities to which the Presidents who held office for those terms are considered to belong. For future Presidents, the communities to which they belong will be decided in accordance with the laws enacted by the Legislature pursuant to Article 19B.

## PART 5

## OTHER AMENDMENTS RELATING TO THE PRESIDENT

Clause 10 replaces Article 21(2) in favour of an approach where the discretionary nature of a power conferred on the President is generally stated in the specific power-conferring provision rather than in Article 21. Only the President's discretionary powers in relation to the appointment of the Prime Minister and the dissolution of Parliament, which existed before 30 November 1991, are kept in Article 21(2).

Clause 11 inserts a new Article 21A, which imposes a time limit where the President's assent, concurrence, approval or confirmation is sought in matters where the President exercises a discretionary power under the Constitution. The default time limit is 6 weeks for most cases. For Supply Bills, Supplementary Supply Bills, Final Supply Bills and matters falling under Article 5A, 5B, 5C, 22G, 22H, 22I or 151(4), the default time limit is 30 days. The default time limit in any particular case can be reduced to no less than 15 days after the date of a certificate of urgency by the Prime Minister. The default time limit may also be extended by agreement between the President and the Cabinet. In the case of Articles 5C and 22H, time does not run when a Bill has been referred to a tribunal and is pending the tribunal's opinion. If the President fails to signify a decision within the time limit, the President is deemed to have given the assent, concurrence, approval or confirmation that was sought, except in the case of Article 22G, where the President is deemed to have refused to concur with the making of an inquiry or the carrying out of an investigation by the Director of the Corrupt Practices Investigation Bureau. The Article does not apply to the President's discretionary power in relation to the dissolution of Parliament, which existed before 30 November 1991.

Clause 15 deletes Article 22H(4) in consequence of the general time limit in the new Article 21A.

Clause 16(a) amends Article 22L(1) to provide that the office of President becomes vacant if the President ceases to be a citizen of Singapore.

Clause 16(d) amends Article 22L(3) to provide that the President can be removed on the ground of intentionally or knowingly making a materially false or misleading statement of fact, or intentionally or knowingly failing to state a material fact, to the Presidential Elections Committee for the purpose of demonstrating his eligibility to be elected as President.

Clause 27 amends Article 144(1)(a) and (b) to state that the President's powers in these provisions are exercisable in his discretion, in consequence of the substitution of Article 21(2).

Clause 28(b) deletes Article 148A(5) in consequence of the general time limit in the new Article 21A.

Clause 31 amends Article 151(4) to state that the President's power under that provision is exercisable in his discretion, in consequence of the substitution of Article 21(2).

## PART 6

### COUNCIL OF PRESIDENTIAL ADVISERS

Part VA is amended to strengthen the role and composition of the Council of Presidential Advisers (called in this Part the Council), and to put in place a more uniform framework for the Council's provision of advice to the President and related matters.

Clause 17 amends Article 37B to enlarge the Council to include 2 more members, one to be appointed by the President acting in his discretion and the other to be appointed by the President on the advice of the Prime Minister. In order to ensure that appointments to the Council are regularly staggered, the enlarged 8-member Council will be divided into 3 divisions. Appointments under each division will expire every sixth year, and the expiry dates for each division are staggered at 2-year intervals. Where the seat of a member is prematurely vacated, the term of the replacement member is also subject to the same expiry date, in order to preserve the regular staggering.

Clause 19 amends Article 37D to require that certain matters be considered before a person is appointed as a member of the Council. These matters include the character, expertise and experience of the person.

Clause 21 amends the general statement of the Council's function in Article 37I to reflect the Council's enlarged role.

Clause 22 inserts new Articles 37IA to 37IG.

The new Article 37IA(1) imposes a general duty on the President to consult the Council before exercising any discretionary power conferred on him by the Constitution. The general duty is subject to exceptions specified in the new Article 37IA(2) where consultation is optional. The exceptions fall into 3 categories. The first is the President's discretionary powers in relation to investigations by the Director of the Corrupt Practices Investigation Bureau, restraining orders under the Maintenance of Religious Harmony Act (Cap. 167A) and preventive detentions under any law or ordinance made pursuant to Part XII. The second is the President's discretionary powers under Part VA (relating to the Council). The third is the President's discretionary powers before 30 November 1991, such as his powers to appoint the Prime Minister and in relation to the dissolution of Parliament.

The new Article 37IB is a subset of the general duty in the new Article 37IA(1). It requires the President to immediately refer to the Council 2 subsets of the cases for which the President is required to consult the Council under the new

Article 37IA(1) — (1) cases where the President’s assent, concurrence or approval is sought; and (2) any proposed transaction that the President is informed of under Article 22B(6), 22D(5) or 148G(1). The reference requirement will therefore not apply when the action the President is empowered to take does not take any of these forms. For instance, a reference must be made when the President’s concurrence is sought for an appointment under Article 22(1), but not when the President makes a request for information under Article 22F (although such a request will fall under the general duty in Article 37IA).

The new Article 37IC imposes a time limit for the Council to make a recommendation in a reference under the new Article 37IB. The general time limit is 15 days (for matters which the President has 30 days to decide under the new Article 21A(2)) or 3 weeks (for matters which the President has 6 weeks to decide under the new Article 21A(2)). This time limit can be extended by the President within the confines of his own time limits under the new Article 21A. Provision is also made for modifications to the Council’s time limit if the Prime Minister issues a certificate of urgency under the new Article 21A(3)(a). If the Council fails to make a recommendation within the time limit, the Council is deemed to have recommended in favour of giving the assent, concurrence or approval sought, or against disapproving the proposed transaction under Article 22B(7), 22D(6) or 148G(2), as the case may be.

The new Article 37ID requires the Council, when giving its recommendation in a reference under the new Article 37IB, to state the number of votes for or against the recommendation and the Council’s grounds.

The new Article 37IE requires the President to certify the grounds for his decision to the Prime Minister if, in a case referred under the new Article 37IB, the President refuses to give the assent, concurrence or approval that was sought, or disapproves a proposed transaction under Article 22B(7), 22D(6) or 148G(2). The President must also, at the same time, send the Council’s recommendation to the Prime Minister. If the President withholds his assent to a Supply Bill, Supplementary Supply Bill or Final Supply Bill, the President must also publish his grounds in the *Gazette*, and send the Council’s recommendation to the Speaker, who must present the recommendation to Parliament. If the President disapproves the budget of, or a proposed transaction by, a Fifth Schedule entity, the President must also send his certified grounds and the Council’s recommendation to the chairman of the entity.

The new Article 37IF empowers Parliament to, by resolution, overrule the President if, in a case referred under the new Article 37IB, the President acted contrary to the recommendation of the Council in refusing to give the assent, concurrence or approval that was sought, or in disapproving a proposed transaction under Article 22B(7), 22D(6) or 148G(2). Notice of an overruling resolution must be given by a Minister, and the resolution can only be moved after the President’s grounds are published in the *Gazette* and the Council’s recommendation is sent to

the Speaker, who must present the recommendation to Parliament. (In the case of a Supply Bill, Supplementary Supply Bill or Final Supply Bill this would have already been done under the new Article 37IE(2)(b).) The resolution must be passed by no less than two-thirds of the total number of Members of Parliament (excluding nominated Members). The overruling mechanism does not apply to the President's discretionary powers under the new Articles 5A, 5B and 5C (which have their own overruling mechanisms) and Article 22H.

The new Article 37IG(1) provides for the Council to have a quorum of 5 members, including the Chairman or the member acting as the Chairman. The existing provisions on voting in clause (2B) of Article 37J (which is deleted by clause 23(b)) are re-enacted as Article 37IG(2) and (3).

Clause 23(c) amends Article 37J(3) to give the Council autonomy over its internal procedure, subject to the Constitution.

A number of other amendments are made as a consequence of these substantive changes.

Clause 10 deletes Article 21(3) and (4) (President's duty to consult the Council of Presidential Advisers in certain cases) in consequence of the President's general duty under the new Article 37IA to consult the Council.

Clause 12(c) deletes Article 22(2) and (3) (overruling provisions relating to the appointment of key public officers) in consequence of the general overruling mechanism under the new Article 37IF.

Clause 13(a) deletes Article 22A(1A) and (1B) (overruling provisions relating to appointments to Fifth Schedule statutory boards) in consequence of the general overruling mechanism under the new Article 37IF.

Clause 14(a) deletes Article 22C(1A) and (1B) (overruling provisions relating to appointments to the boards of Fifth Schedule Government companies) in consequence of the general overruling mechanism under the new Article 37IF.

Clause 18 amends Article 37C in consequence of the amendments to Article 37B.

Clause 20 amends Article 37H(2) in consequence of the amendments to Article 37B.

Clause 23(b) deletes Article 37J(2) and (2A) (Council to state votes, etc., in recommendations on Supply Bills and appointments) in consequence of the Council's general duty under the new Article 37ID to state its votes and give its grounds when making a recommendation in a reference under the new Article 37IB.

Clause 24 repeals Article 37K (Council to report recommendations on Supply Bills and appointments to the Prime Minister and Speaker) in consequence of the reporting regime provided for by the new Articles 37ID, 37IE and 37IF.



Clause 29 repeals Article 148D (overruling provisions relating to Supply Bills, etc.) in consequence of the general overruling mechanism under the new Article 37IF.

Clause 33 inserts a new Article 165, which makes transitional provisions for existing members of the Council and the first appointments under Article 37B.

## PART 7

### NON-CONSTITUENCY MEMBERS OF PARLIAMENT

Clause 25(a) amends Article 39(1)(b) to increase the maximum number of non-constituency Members of Parliament from 9 to 12.

Clause 25(b) amends Article 39(2) to remove the voting disabilities of a non-constituency Member of Parliament. As a consequence of this change, non-constituency Members of Parliament are included in the total number of sitting Members of Parliament required to transact certain items of business —

- (a) clause 2(b) amends Article 5(2) to include non-constituency Members of Parliament in the number of Members of Parliament needed to pass ordinary amendments to the Constitution;
- (b) clause 16(b) amends Article 22L(3), (4) and (7) to include non-constituency Members of Parliament in the number of Members of Parliament needed for the various Parliamentary stages in the process of removing a President; and
- (c) non-constituency Members of Parliament are included in the number of Members of Parliament required to pass a constitutional amendment Bill to which the new Article 5A or 5B applies, to affirm a constitutional amendment Bill to which the new Article 5C applies and to overrule the President under the new Article 37IF.

The proportion of Members of Parliament needed to make these decisions will be counted with reference to the total number of sitting Members of Parliament (excluding nominated Members of Parliament), rather than the total number of elected Members of Parliament referred to in Article 39(1)(a) (i.e. the total number of elected Members of Parliament required to be returned at a general election).

## PART 8

### MISCELLANEOUS

Clause 12(a) and (b) amends the list of appointments stated in Article 22(1) by adding the appointments of the members of any personnel board established under (a) Article 110D, to exercise any power over Division I officers; or (b) Article 111AA.

Clause 13(*b*) amends Article 22A(5) to require that a statutory board has \$500 million in reserves before it can be added to the Fifth Schedule (up from the current \$100 million).

Clause 14(*b*) amends Article 22C(5)(*a*) to require that a Government company has \$500 million worth of share holders' funds attributable to the Government's interest before it can be added to the Fifth Schedule (up from the current \$100 million).

Clause 25(*d*) inserts a new paragraph (*f*) in Article 39(2) to clarify that a nominated Member of Parliament may not vote on any question on which nominated Members of Parliament are excluded from the number of Members of Parliament required for an affirmative decision. This would include, for example, a motion to overrule the President under the new Article 37IF, for which an affirmative decision requires two-thirds of the total number of Members of Parliament (excluding nominated Members).

Clause 26 amends Article 78(6)(*c*) to exclude nominated Members of Parliament from the majority needed to present a Bill containing a differentiating measure for the President's assent, in line with the exclusion of nominated Members of Parliament from the majority needed to overrule the President.

Clause 34 amends Part II of the Fifth Schedule to remove MND Holdings Pte. Ltd. from that Part.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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