

Constitution of the Republic of Singapore (Amendment) Bill

Bill No. 35/2014.

Read the first time on 7 October 2014.

A BILL

intituled

An Act to amend the Constitution of the Republic of Singapore
(1999 Reprint).

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 may be cited as the Constitution of the Republic of Singapore (Amendment) Act 2014 and shall come into operation on such date as the President may, by notification in the *Gazette*, appoint.

5 Amendment of Article 2

2. Article 2(1) of the Constitution of the Republic of Singapore (referred to in this Act as the Constitution) is amended —

(a) by deleting the definition of “Judge of the Supreme Court” and substituting the following definition:

10 ““Judge of the Supreme Court” means the Chief Justice, a Judge of Appeal or a Judge of the High Court;”;

(b) by inserting, immediately after the words “count for pension” in the definition of “remuneration”, the words “or gratuity”;
15 and

(c) by inserting, immediately after the words “grant of pensions” in the definition of “remuneration”, the words “or gratuities”.

Amendment of Article 22

3. Article 22(1) of the Constitution is amended by deleting the
20 words “Judges and Judicial Commissioners of the Supreme Court” in paragraph (a) and substituting the words “Judges of the Supreme Court, and the Judicial Commissioners, Senior Judges and International Judges of the Supreme Court”.

Amendment of Article 35

25 4. Article 35 of the Constitution is amended —

(a) by deleting paragraph (a) of clause (11) and substituting the following paragraph:

“(a) be prescribed in regulations made by the President and published in the *Gazette*; or”; and

30 (b) by inserting, immediately after clause (11), the following clause:

“(11A) Regulations made under clause (11)(a) may provide that any gratuity payable in respect of service as the Attorney-General shall be charged on and paid out of the Consolidated Fund.”.

New Article 35A

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5. The Constitution is amended by inserting, immediately after Article 35, the following Article:

“Deputy Attorneys-General

35A.—(1) The President may, on the advice of the Prime Minister, appoint one or more Deputy Attorneys-General from individuals who are eligible for appointment as the Attorney-General.

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(2) Before tendering any advice to the President under clause (1), the Prime Minister must consult the Attorney-General and the Chairman of the Public Service Commission.

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(3) However, the Prime Minister need not consult any person under clause (2) if he is satisfied that it is impracticable to do so because of the infirmity of body or mind of that person or for any other reason.

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(4) A Deputy Attorney-General is, subject to the general direction and control of the Attorney-General, to perform such duties of the Attorney-General referred to in Article 35(7) or (8) as may be assigned by the Attorney-General, and shall be responsible to the Attorney-General for that due performance.

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(5) In the performance of his duties, a Deputy Attorney-General has the right of audience in, and takes precedence over any person (other than the Attorney-General) appearing before, any court or tribunal in Singapore.

(6) A Deputy Attorney-General holds office —

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(a) until the end of the specific period he is appointed for (without prejudice to re-appointment); or

(b) if no period is so specified, until he attains 60 years of age.

5 (7) The President may, on the advice of the Prime Minister, permit a Deputy Attorney-General who has attained the age of 60 years to remain in office for such fixed period as may be agreed between the Deputy Attorney-General and the Government.

10 (8) However, a Deputy Attorney-General may at any time earlier resign his office by writing under his hand addressed to the President or may be earlier removed under clause (9).

(9) A Deputy Attorney-General may be removed from office by the President on the advice of the Prime Minister.

15 (10) The Prime Minister may advise the President for the purposes of clause (9) only on the following grounds, with which a tribunal consisting of the Chief Justice and 2 other Judges of the Supreme Court nominated for that purpose by the Chief Justice must concur:

20 (a) the inability of the Deputy Attorney-General concerned to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);

(b) any misbehaviour of the Deputy Attorney-General concerned.

25 (11) A Deputy Attorney-General is to be paid such remuneration and allowances as may from time to time be determined (all of which are charged on and paid out of the Consolidated Fund), and his terms of service are —

(a) to be prescribed in regulations made by the President and published in the *Gazette*; or

30 (b) to be determined by the President in so far as they are not determined by or under any such law.

(12) The terms of service of a Deputy Attorney-General must not be altered to his disadvantage during his continuance in office; and in so far as any of those terms of service depend upon

his option, any terms that he opts for shall be taken to be more advantageous to him than any for which he might have opted.

(13) The tribunal referred to in clause (10) is to regulate its own procedure and may make rules for that purpose.

(14) To avoid doubt, nothing done by a Deputy Attorney-General shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.”. 5

Amendment of Article 69

6. Article 69 of the Constitution is amended — 10

(a) by inserting the word “and” at the end of clause (1)(a);

(b) by deleting paragraphs (b) and (c) of clause (1) and substituting the following paragraph:

“(b) not more than 20 members.”;

(c) by inserting, immediately after clause (1), the following clauses: 15

“(1A) Up to 10 members may be permanent members appointed for life.

(1B) Unless appointed for life, a member shall be appointed for a period of 3 years.”; and 20

(d) by deleting the words “clause (1)(c)” in clause (3) and substituting the words “clause (1B)”.

Amendment of Article 94

7. Article 94 of the Constitution is amended by deleting clauses (2) to (5) and substituting the following clauses: 25

“(2) The Court of Appeal shall consist of the Chief Justice and the Judges of Appeal.

(3) The High Court shall consist of the Chief Justice and the Judges of the High Court.

(4) A Judge of Appeal may sit in the High Court on such occasion as the Chief Justice requires. 30

(5) A Judge of the High Court may sit in the Court of Appeal on such occasion as the Chief Justice requires.

(6) A person appointed under Article 95(4) to exercise the powers and perform the functions of a Judge of the High Court may, in accordance with the terms of his appointment and subject to Article 95(7), (8), (9) and (10), as the case may be —

(a) sit in the High Court; and

(b) sit in the Court of Appeal on such occasion as the Chief Justice requires.”.

Amendment of Article 95

8. Article 95 of the Constitution is amended —

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

“(2) The President may, if he, acting in his discretion, concurs with the advice of the Prime Minister, appoint a person who is 65 years of age or older and who is either qualified for appointment as a Judge of the Supreme Court or has ceased to be a Judge of the Supreme Court, to be the Chief Justice, a Judge of Appeal or a Judge of the High Court for a specified period.

(3) The office of a Judge of the Supreme Court shall not be abolished during his continuance in office.

(4) In order to facilitate the disposal of business in the Supreme Court, the President may, if he, acting in his discretion, concurs with the advice of the Prime Minister —

(a) appoint a person who is qualified for appointment as a Judge of the Supreme Court to be a Judicial Commissioner of the Supreme Court;

(b) appoint a person who has ceased to be a Judge of the Supreme Court to be a Senior Judge of the Supreme Court; or

(c) appoint a person who, in the opinion of the Chief Justice, is a person with the necessary qualifications, experience and professional standing to be an International Judge of the Supreme Court.

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(5) For the purposes of clause (4), a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court may —

(a) be appointed to hear and determine a specific case only (subject to clause (10) for an International Judge); or

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(b) be appointed for a specified period.

(6) Before tendering his advice as to an appointment under clause (1), (2) or (4), other than the appointment of the Chief Justice, the Prime Minister must consult the Chief Justice.

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(7) A Judicial Commissioner of the Supreme Court appointed for a specified period may exercise the powers and perform the functions of a Judge of the High Court in any case or in respect of such classes of cases as the Chief Justice may specify.

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(8) A Senior Judge and an International Judge of the Supreme Court appointed for a specified period may exercise the powers and perform the functions of a Judge of the High Court in such cases or classes of cases as the Chief Justice specifies under clause (9).

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(9) The Chief Justice may —

(a) from time to time, require a Senior Judge of the Supreme Court appointed for a specified period to hear and determine any specific case, or such classes of cases as the Chief Justice may specify; and

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(b) from time to time and subject to clause (10), require an International Judge of the Supreme

Court appointed for a specified period to hear and determine any specific case, or such classes of cases as the Chief Justice may specify.

5 (10) Parliament may by law limit the classes of cases that may be heard and determined by an International Judge of the Supreme Court.

10 (11) Anything done by a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court when acting in accordance with the terms of his appointment shall have the same validity and effect as if done by a Judge of the High Court and, in respect thereof, the Judicial Commissioner, Senior Judge or International Judge (as the case may be) shall have the same powers and enjoy the same immunities as if he had
15 been a Judge of the High Court.”; and

(b) by inserting, immediately after the word “Court” in the Article heading, the word “, etc.”.

Amendment of Article 97

9. Article 97 of the Constitution is amended —

20 (a) by deleting the words “The Chief Justice and every person appointed or designated to sit as a Judge of the High Court or a Judge of Appeal or appointed as a Judicial Commissioner of the Supreme Court” in clause (1) and substituting the words
25 “Every person appointed as a Judge of the Supreme Court or a Judicial Commissioner or a Senior Judge of the Supreme Court”;

(b) by inserting, immediately after clause (1), the following clause:

30 “(1A) Every person appointed as an International Judge of the Supreme Court shall, before he enters on the execution of his office, take, in the presence of the President, the Oath of Office in the form set out in the First Schedule.”;

- (c) by deleting the words “Notwithstanding clause (1), a Judicial Commissioner who is appointed under Article 94(5)” in clause (2) and substituting the words “Notwithstanding clauses (1) and (1A), a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court who is appointed under Article 95(4)”; and 5
- (d) by deleting the words “and Judicial Commissioners of Supreme Court” in the Article heading and substituting the words “of Supreme Court, etc.”.

Amendment of Article 98

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10. Article 98 of the Constitution is amended —

- (a) by deleting the words “a Judge of the Supreme Court” in clause (1) and substituting the words “a person appointed as a Judge of the Supreme Court under Article 95(1)”; 15
- (b) by deleting the words “A Judge of the Supreme Court” in clause (2) and substituting the words “A Judge of the Supreme Court or a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court”; 20
- (c) by deleting the words “a Judge of the Supreme Court” in clause (3) and substituting the words “a person holding office as a Judge of the Supreme Court or a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court”; 25
- (d) by deleting the words “the Judge” in clause (3) and substituting the words “the person”; 30
- (e) by deleting the words “any other Judge” in clause (5) and substituting the words “any other Judge of the Supreme Court or a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court”; 35
- (f) by deleting the words “a Judge of the Supreme Court” in clause (5) and substituting the words “a Judge of the Supreme Court, or a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court (as the case may be)”; 40

(g) by inserting, immediately after the words “other than their remuneration” in clause (7), the words “, and may provide that any gratuity payable in respect of service as a Judge of the Supreme Court shall be charged on the Consolidated Fund”;

5 (h) by deleting the words “(including pension rights)” in clause (8) and substituting the words “(including any pension or gratuity)”; and

(i) by inserting, immediately after the words “Supreme Court” in the Article heading, the word “, etc.”.

10 **Amendment of Article 99**

11. Article 99 of the Constitution is amended by deleting the words “a person designated to sit as such a Judge or a Judicial Commissioner” and substituting the words “a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court”.

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Amendment of Article 108

12. Article 108 of the Constitution is amended —

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

20 “(a) be prescribed in regulations made by the President and published in the *Gazette*; or”; and

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

25 “(2A) Regulations made under clause (2)(a) may provide that any gratuity payable in respect of service as a member of the Public Service Commission shall be charged on and paid out of the Consolidated Fund.”.

Amendment of Article 114

30 13. Article 114(1) of the Constitution is amended by deleting the word “Pensions” and substituting the words “Subject to clause (2) and Articles 35(11A), 98(7), 108(2A) and 148F(10B), pensions”.

Amendment of Article 142

14. Article 142(4) of the Constitution is amended by deleting the words “Government of Singapore Investment Corporation Pte. Ltd.” in paragraph (a) of the definition of “relevant assets” and substituting the words “GIC Pte. Ltd.”.

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Amendment of Article 148F

15. Article 148F of the Constitution is amended by inserting, immediately after clause (10), the following clauses:

“(10A) Subject to the provisions of this Constitution, the terms of service of the Auditor-General may be prescribed in regulations made by the President and published in the *Gazette*, and in so far as they are not prescribed by such law, be determined by the President.

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(10B) Regulations made under clause (10A) may provide that any gratuity payable in respect of service as the Auditor-General shall be charged on the Consolidated Fund.”.

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Amendment of First Schedule

16. The First Schedule to the Constitution is amended —

(a) by inserting, immediately after the words “*a Judicial Commissioner*” in the heading to the form of Oath of Office of Chief Justice, a Judge of the Supreme Court and a Judicial Commissioner, the words “*and a Senior Judge of the Supreme Court*”; and

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(b) by inserting, immediately before the form of Oath of Secrecy of Chairman or Member of the Presidential Council for Minority Rights, the following form of Oath:

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“6A. *Oath of Office of International Judge of the Supreme Court*

I,,
 having been appointed to the office of
, do solemnly swear
 (or affirm) that I will faithfully discharge my judicial duties, and I
 will do right to all manner of people after the laws and usages of the
 Republic of Singapore without fear or favour, affection or ill-will to
 the best of my ability.”.

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Amendment of Fifth Schedule

17. Part II of the Fifth Schedule to the Constitution is amended by deleting item 1 and substituting the following item:

“1. GIC Pte. Ltd.”.

5 Transitional provisions

18.—(1) A person designated as a Judge of the High Court or as a Judge of Appeal under Article 94(3) of the Constitution immediately before the date of commencement of sections 7 and 8 shall continue to hold office in accordance with the terms of his appointment and as if he were appointed under clause (2) of Article 95 of the Constitution as amended by section 8.

(2) A person appointed as a Judicial Commissioner of the Supreme Court under Article 94(4) of the Constitution immediately before the date of commencement of sections 7 and 8 shall continue to hold office in accordance with the terms of his appointment and as if he were appointed under clause (4)(a) of Article 95 of the Constitution as amended by section 8.

(3) The amendments in sections 4, 10(g), 12 and 15 do not apply to or in relation to any person who is the Attorney-General, the Chief Justice, a Judge of Appeal or a Judge of the High Court, a member of the Public Service Commission or the Auditor-General immediately before the respective date of commencement of any of those sections.

EXPLANATORY STATEMENT

This Bill seeks to amend the Constitution of the Republic of Singapore (1999 Reprint) for the following main purposes:

- (a) to create the judicial appointments of a Senior Judge of the Supreme Court (Senior Judge) and an International Judge of the Supreme Court (International Judge);
- (b) to create the appointment of a Deputy Attorney-General;
- (c) to make certain provisions relating to the grant of a gratuity to persons appointed to certain constitutional offices.

Clause 1 relates to the short title and commencement.

SENIOR AND INTERNATIONAL JUDGES OF THE SUPREME COURT

Clauses 2(a), 3, 7, 8, 9, 10 (except paragraphs (g) and (h)), 11, 16 and 18(1) and (2) relate to the creation of 2 new judicial appointments, i.e. a Senior Judge and an International Judge. The amendments also improve the organisation of Part VIII of the Constitution relating to the Judiciary.

Clause 2(a) amends Article 2(1) to clarify that “Judge of the Supreme Court” means the Chief Justice, a Judge of Appeal or a Judge of the High Court.

Clause 3 amends Article 22(1) to provide that the President, acting in his discretion, may refuse to appoint a person as a Senior Judge or an International Judge.

Clause 7 amends Article 94.

The existing Article 94(2) to (5) is deleted as the provisions relating to judicial appointments will be consolidated under Article 95.

The new Article 94(2) and (3) restates the ordinary constitution of the Court of Appeal and the High Court, respectively. The new Article 94(4), (5) and (6) provides for the ability of persons who are not part of the ordinary constitution of the Court of Appeal and the High Court to sit in those Courts.

Clause 8 amends Article 95 to consolidate the existing provisions relating to judicial appointments and to provide for the appointment of Senior Judges and International Judges.

The new Article 95(2) provides, in line with existing practice, that a person who is 65 years of age or older may be appointed as the Chief Justice, a Judge of Appeal or a Judge of the High Court for a specified period.

The new Article 95(3) restates the present position by providing that the office of a Judge of a Supreme Court cannot be abolished while the Judge is in office.

The new Article 95(4)(a) provides for the appointment of Judicial Commissioners of the Supreme Court and the new Article 95(5), (6), (7) and (11) makes further provisions for such appointments in line with the existing position.

The new Article 95(4)(b) and (c) provides for the appointment of Senior Judges and International Judges.

The new Article 95(5), (6), (8), (9), (10) and (11) makes further provisions for these appointments. A Senior Judge must be a former Judge of the Supreme Court. An International Judge must be a person who, in the opinion of the Chief Justice, has the necessary qualifications, experience and professional standing. Senior

Judges and International Judges will sit on an *ad hoc* basis, in such specific cases or classes of cases that the Chief Justice may from time to time require them to hear. Parliament may by law limit the classes of cases that may be heard by an International Judge.

Clause 9 amends Article 97 to require a Senior Judge and an International Judge to take an Oath of Office before entering upon the execution of their offices.

Clause 10(a) makes a consequential amendment to Article 98(1).

Clause 10(b) to (f) amends Article 98(2), (3) and (5) to provide that a Senior Judge or an International Judge may not be removed from office before the expiry of his appointment except in accordance with the procedure for removing a Judge of the Supreme Court, and to clarify that the same applies to a Judicial Commissioner.

Clause 11 amends Article 99 to extend the restriction of Parliamentary discussion of the conduct of a Judge or Judicial Commissioner of the Supreme Court to a Senior Judge and an International Judge.

Clause 16(a) makes a consequential amendment to the First Schedule.

Clause 16(b) prescribes a different form of Oath for an International Judge, who will not be required to swear to preserve, protect and defend the Constitution.

Clause 18(1) and (2) contains transitional provisions relating to persons currently designated as a Judge of Appeal or a Judge of the High Court, or appointed as Judicial Commissioners.

DEPUTY ATTORNEYS-GENERAL

Clause 5 introduces a new Article 35A, which enables the appointment of one or more Deputy Attorneys-General from individuals who are eligible to be appointed as the Attorney-General.

A Deputy Attorney-General is to be appointed by the President on the advice of the Prime Minister. Before tendering his advice, the Prime Minister must consult the Attorney-General and the Chairman of the Public Service Commission unless it is impracticable to do so.

A Deputy Attorney-General is to perform such duties of the Attorney-General referred to in Article 35(7) or (8) as may be assigned by the Attorney-General. A Deputy Attorney-General will be subject to the general direction and control of the Attorney-General.

GRANT OF GRATUITIES TO PERSONS APPOINTED TO CERTAIN CONSTITUTIONAL OFFICES

Clauses 2(*b*) and (*c*), 4, 10(*g*) and (*h*), 12, 13, 15 and 18(3) relate to the grant of a gratuity to persons appointed to certain constitutional offices.

Clause 2(*b*) and (*c*) amends the definition of “remuneration” in Article 2(1) to include emoluments that count for gratuities.

Clauses 4, 12 and 15 amend Articles 35, 108 and 148F, respectively. The amendments will empower the President, on advice, to prescribe the terms of service of the Attorney-General, the members of the Public Service Commission and the Auditor-General. This will enable a gratuity scheme to be created for persons appointed to these offices. A gratuity payable for service in these offices may be charged on the Consolidated Fund.

Clause 10(*g*) amends Article 98(7) to provide that Parliament may by law charge on the Consolidated Fund any gratuity it grants to a Judge of the Supreme Court, and clause 10(*h*) makes a consequential amendment to Article 98(8).

Clause 13 amends Article 114(1) as a consequence of the amendments to Articles 35, 98(7), 108 and 148F. Where a gratuity granted under those amendments is charged to the Consolidated Fund, Article 114(1) will not apply to charge the same gratuity to the Pension Fund.

Clause 18(3) provides that the amendments in clauses 4, 10(*g*), 12 and 15 do not apply to existing office-holders. Such persons remain eligible to receive a pension under the Pensions Act (Cap. 225).

MISCELLANEOUS

Clause 6 amends Article 69 in respect of the composition of the Presidential Council for Minority Rights. The limit of 10 non-permanent members will be removed. The maximum membership of the Council (including the Chairman) will remain at 21, and the maximum number of permanent members will remain at 10.

Clauses 14 and 17 amend Article 142(4) and the Fifth Schedule, respectively, to reflect the change of name of the Government of Singapore Investment Corporation Pte. Ltd. to GIC Pte. Ltd.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
