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Submission on Specific Aspects of the Elected Presidency

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**Submission on Specific Aspects
of the Elected Presidency**

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© 2016. This submission, to which minor redactions have been made, was prepared in response to a [call for public feedback](#) (archived [here](#)) by the Constitutional Commission to study and make recommendations on specific aspects of the Elected Presidency chaired by the Honourable Chief Justice Sundaresh Menon. The submission may be obtained from the [Singapore Management University Repository](#) at <http://works.bepress.com/jacklee/60/> and the [Social Sciences Research Network](#) at <http://ssrn.com/abstract=2764931>.

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Constitutional Commission Secretariat
1 Supreme Court Lane
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To the honourable members of the Constitutional Commission:

SUBMISSION ON SPECIFIC ASPECTS OF THE ELECTED PRESIDENCY

In response to the Commission's request for feedback on the above topic, I would like to make the following submission.

I. QUALIFYING PROCESS FOR CANDIDACY FOR THE ELECTED PRESIDENT

A. Qualifications

Presently, Articles 19(2)(g)(iii) and (iv) of the Constitution of the Republic of Singapore¹ provide, among others, the following as qualifications to be elected as President:

(2) A person shall be qualified to be elected as President if he – [...]

(g) has for a period of not less than 3 years held office – [...]

(iii) as chairman of the board of directors or chief executive officer of a company incorporated or registered under the Companies Act (Cap. 50) with a paid-up capital of at least \$100 million or its equivalent in foreign currency; or

(iv) in any other similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector which, in the opinion of the Presidential Elections Committee, has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President.

During his 27 January 2016 speech in Parliament on the President's Address, Prime Minister Lee Hsien Loong noted the concept underlying the qualifications for President "was to peg it at people with high senior management competence and experience, as they have to assess and decide on financial proposals involving billions

¹ 1985 Rev Ed, 1999 Rep.

of dollars, and the fitness of candidates to hold demanding appointments”. However, since the \$100 million figure mentioned in Article 19(2)(g)(iii) was set in 1990, due to inflation an equivalent sum today would be \$158 million. In addition, “over 25 years, our economy has grown, government spending and reserves have increased, and the size and complexity of the organisations subject to the second key of the President have increased many fold”. The Prime Minister therefore suggested that this figure might require upward adjustment.

An inevitable consequence of such an adjustment, though, is a reduction in the pool of potential presidential candidates. It should be borne in mind that a number of persons within this pool would immediately not qualify as presidential candidates as they are not Singapore citizens.² Most Singapore citizens within this pool probably do not have the inclination to run for President. It is probable that the number of those willing to do so is a small percentage of the pool.

Moreover, out of the proportion of citizens in the pool willing to put themselves forward as presidential candidates, assuming that their ethnic makeup largely mirrors that of the citizenry in general, only about a quarter would be from minority ethnic communities in Singapore. According to information provided by the Department of Statistics, as of September 2015 74.3% of Singapore residents were Chinese, 13.3% were Malay, 9.1% were Indian, and 3.2% were of other races.³ Therefore, 25.6% were not Chinese. These statistics provide only a rough-and-ready indication of the ethnic makeup of Singapore citizens since “Singapore residents” include both citizens and permanent residents.⁴ Nonetheless, they demonstrate that increasing the minimum paid-up capital for companies referred to in Article 19(2)(g)(iii) would make it more difficult to find suitably qualified presidential candidates from minority communities.

It has been pointed out by Professor Thio Li-ann that the stringent criteria currently in Article 19(2) of the Constitution already have the effect of excluding from being President otherwise well-qualified persons such as diplomats and respected community leaders.⁵ Furthermore, these criteria are stricter than the criteria applicable to the Prime Minister, who is “the head of government and the real centre of political power”, and to the Minister for Finance, both of whom are “only subject to the modest requirements which elected parliamentarians must satisfy under Article 44”.⁶ Article 19(2) need only ensure that presidential candidates possess “financial literacy, not necessarily financial wizardry”, since the President will be advised in the exercise of his discretionary powers by, among others, the Council of Presidential Advisers (CPA).⁷

² Constitution, Art 19(2)(a).

³ Department of Statistics, [Population Trends, 2015](http://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/population_and_population_structure/population2015.pdf) (September 2015) <http://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/population_and_population_structure/population2015.pdf> [archived [here](#)]. The percentages do not add up to 100% due to rounding.

⁴ The Department of Statistics does not appear to provide publicly available data on the ethnic makeup of Singapore citizens.

⁵ Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Singapore: Academy Publishing, 2012) at 403, [09.039].

⁶ *Id* at 403, [09.040]; and at 405, [09.043]. See also Li-ann Thio, “Singapore: (S)electing the President – Diluting Democracy?” (2007) 5 Int’l J Const L 526 at 542.

⁷ *Id* at 405, [09.043].

For these reasons, it is submitted that the \$100 million figure mentioned in Article 19(2)(g)(iii) does not require alteration, or should be altered only to the extent of accounting for currency inflation occurring between 1990 and 2016.

B. Qualifying Process

1. Endorsement of Candidates by Political Parties

To ensure that the President is non-partisan, candidates cannot be members of any political party on the date of nomination for election.⁸ After election, the President must continue refraining from being a member of a political party; and if he or she was a Member of Parliament (MP), he or she must vacate the parliamentary seat.⁹

On the other hand, during the election process, there is no prohibition against political parties or the Government endorsing candidates. It is submitted that including such a prohibition in the Constitution would help to ensure that the office of the President remains non-partisan.¹⁰

2. Right of Prospective Candidates to Communicate with the Presidential Elections Committee

Article 18(6) of the Constitution states that the Presidential Elections Committee (PEC) may regulate its own procedure, but otherwise does not provide that the Committee is under a duty to consider matters that have been brought to its attention by prospective candidates. The view has been taken, and I agree, that it may be desirable to give prospective candidates a right to communicate with the PEC and place relevant information before it, and to have such information considered by the PEC, particularly if a prospective candidate feels this is necessary to correct erroneous information about him or her that has been circulating publicly.¹¹

3. Reviewability of the Presidential Elections Committee's Decisions

Article 18(9) of the Constitution states: “A decision of the Presidential Elections Committee as to whether a candidate for election to the office of President has fulfilled the requirement of paragraph (e) or (g)(iv) of Article 19(2) shall be final and shall not be subject to appeal or review in any court.” This means the Committee is not accountable to anyone with regard to these requirements. Thio Li-ann asks, “who then guards the guardians?”¹²

It is submitted that disputes relating to these requirements should be judicially reviewable, either by an Election Judge appointed in accordance with Article 93A of the Constitution, or by an *ad hoc* tribunal with at least one Supreme Court judge (such as a tribunal that may be established under Article 37G to determine questions relating to membership of the CPA). To enable prospective candidates to decide whether to apply for a review, it would also be necessary for the PEC to provide

⁸ Constitution, Art 19(2)(f).

⁹ Constitution, Art 19(3)(c) and (d).

¹⁰ See also Thio, “(S)electing the President”, above, n 6 at 538.

¹¹ Thio, “(S)electing the President”, *id* at 538–539.

¹² Thio, *Treatise*, above, n 5 at 405, [09.045]; Thio, “(S)electing the President”, *id* at 540.

detailed reasons why a particular application for a certificate of eligibility has been turned down.

II. SAFEGUARDING OF MINORITY REPRESENTATION IN THE PRESIDENCY

During his parliamentary speech, the Prime Minister also mentioned the desirability of ensuring that people from minority ethnic communities in Singapore can serve as President from time to time. He suggested that there should be a mechanism similar to the Group Representation Constituency (GRC) scheme for presidential elections “to ensure that minorities can be periodically elected if we have not had a particular minority as President for some time”.

While I agree that having diversity in all institutions of governance is vital, I see difficulties in drawing a direct analogy between the GRC and Elected Presidency schemes. Given the eminence of the office of the President, it is hard to conceive of the office being filled by a team of persons (such as the MPs making up a GRC) rather than by an individual. Furthermore, mandating that some presidential candidates be from minority communities detracts to some degree from the right of electors to vote for the candidates in whom they repose trust.

On balance, rather than make any changes to the Constitution at this time, I suggest that steps be taken to encourage people from minority communities to consider standing for the highest office in the country. A leaf might be taken out of the book relating to the appointment of Nominated Members of Parliament (NMPs). Under the Fourth Schedule to the Constitution, NMPs are appointed by the President upon nomination by a Special Select Committee of Parliament.¹³ This Select Committee is required to nominate “persons who have rendered distinguished public service, or who have brought honour to the Republic, or who have distinguished themselves in the field of arts and letters, culture, the sciences, business, industry, the professions, social or community service or the labour movement; and in making any nomination, the Special Select Committee shall have regard to the need for nominated Members to reflect as wide a range of independent and non-partisan views as possible”.¹⁴ To fulfil this requirement, the Select Committee reaches out to various groups and institutions, and invites them to propose suitable prospective candidates for its consideration.

It is submitted that a body could be appointed to play a role in presidential elections similar to the role played by the Special Select Committee in appointing NMPs. In other words, this body would contact business associations, civil society groups, institutions of higher learning, unions, and other relevant organizations, and urge them to encourage suitable candidates from minority communities to participate in presidential elections. The role could perhaps be fulfilled by the Elections Department, although ideally the task should be carried out by a body that is independent of the executive and legislature.

¹³ Constitution, 4th Sched, s 1(2).

¹⁴ Constitution, 4th Sched, s 3(2).

III. FRAMEWORK FOR THE EXERCISE OF THE PRESIDENT'S CUSTODIAL POWERS

Earlier, I alluded to the fact that the Council of Presidential Advisers (CPA) bears the weighty responsibility of advising the President on the exercise of his discretionary powers. I therefore agree that the members of the CPA must have substantial suitable experience in the public and private sectors.

At the moment the Constitution does not spell out the experience that is required of the members, who are appointed by the President acting in his discretion and on the advice of the Prime Minister, the Chief Justice, and the Chairman of the Public Service Commission.¹⁵ While I do not doubt that these officeholders are capable of selecting suitable persons to form the CPA, perhaps to emphasize the need for the members of the CPA to have relevant skills for the task, Article 37D of the Constitution (which sets out a minimal list of qualifications) should be amended to include qualifications along the lines of Article 19(2) which apply to the President, especially Article 19(2)(g). In this case, it would arguably be appropriate to require members of the CPA to satisfy more stringent criteria than those applying to the President.

Finally, Article 37J(1) states that the CPA "may require any public officer or any officer of any statutory board or Government company to appear before the Council and to give such information in relation to any matter referred to the Council by the President under Article 21(3) or (4) and such officer shall not disclose or divulge to any person any matter which has arisen at any meeting of the Council unless he is expressly authorised to do so by the President". However, there is no mention of whether the CPA may seek the assistance and advice of persons who are not public officers, such as accountants, lawyers or other experts. It is submitted that clarifying that the CPA may do so would be desirable.

I am willing to give oral representations in English to the Commission at a public hearing if invited to do so.

Yours faithfully,

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¹⁵ Constitution, Art 37B(1).